

A Review of the Youth Justice System in Northern Ireland

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in ***Northern Ireland***

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Foreword and Acknowledgements

Foreword

It has been a privilege to have been invited to review the youth justice system in Northern Ireland. We have been impressed by the energy and commitment of the many agencies and individuals working for the good of children and young people, and by the progress made on the reforms introduced in the wake of the Criminal Justice Review. The devolution of policing and criminal justice following the Hillsborough Castle Agreement provided a fresh opportunity to take stock of current law, policy and practice and it has been our task to assist in that work with respect to the youth justice system.

When we started, it was anticipated that the work would take only a few months. In fact we needed that time just to meet all the individuals and groups, including children and young people, who wished to tell us their stories and express their views to us. We have received numerous written submissions – some of them very lengthy and detailed - and been directed to a large number of reports, inspections, policy papers and comment. The sheer breadth and complexity of our task quickly became clear and was helpfully acknowledged by the Minister of Justice, who kindly acceded to our request to extend the deadline by three months.

In view of this complexity, we have consciously focused on those issues which we felt, if resolved, would make the greatest difference to the lives of children, victims and communities. That doesn't mean that what is not covered in our report is not important, but that we had to draw the line somewhere and make our own judgement on what needed to be prioritised.

As a team, we have wide experience in the field of youth justice and the law, but we recognise that the real expertise lies here in Northern Ireland. Those who operate in the system and beyond know the issues and problems they face and in most cases have workable solutions for them. Our observations are therefore made in a spirit of considerable humility, conscious of the trust that has been placed in us and of the fact that we *are* outsiders; a status that brings both benefits and disadvantages. But we are encouraged by the knowledge that this review was inspired by a desire to make things better and that has been our aim too.

Acknowledgements

Over the course of the last eight months we have been privileged to meet and speak to many interested and committed people in Northern Ireland. From the outset we have received nothing but courtesy and a very welcome degree of patience towards our numerous questions.

It is evident to us that, from top to bottom of the system, everyone is striving in their own way to build a better future for the children and young people they work with and for the communities in which they live. We witnessed many inspiring examples of this.

Inevitably, it was the young people and their families we spoke to that left the most vivid and lasting memories. Their stories provided graphic and sometimes quite disturbing insights into the nature of the criminal justice system and how they experienced it. In many ways, this report is a tribute to them. But we also acknowledge, with gratitude, the contributions of many others who took the time to show us what they were doing and to share their views and experiences.

We would particularly like to thank the members of the Reference Group for all their work and especially to Alice Chapman, Secretary to the group and to Eileen Crone and Deborah Lyness for the provision of statistical information.

We are indebted to our small secretariat, Tony Kavanagh and Lisa Higgins, for their expertise, unfailing good nature and invaluable support throughout this exercise.

EXECUTIVE SUMMARY

Introduction

This Review was launched in 2010 by the Minister of Justice, David Ford, in furtherance of the Hillsborough Castle Agreement. Undertaken by an independent team of three people, its terms of reference were to critically assess the current arrangements for responding to youth crime and make recommendations for how these might be improved within the wider context of, among other things, international obligations, best practice and a financially uncertain future. The Review Team consulted a wide range of stakeholders, including children and young people and members of the communities where they lived.

Offending by children tends to be less serious than adults; as with the pattern in other jurisdictions, common offences include criminal damage, theft and common assault. Around 10,000 young people come into contact with the criminal justice system at some level during the course of a typical year. Like other developed countries, Northern Ireland has a separate justice system for children, from age 10 to 17 inclusive, underpinned by statutory aims to prevent offending, protect the public and secure the welfare of the child.

The current system

The system itself comprises a number of agencies with recognisable criminal justice functions. The Police Service for Northern Ireland prevents and detects crime; the Public Prosecution Service (NI) decides on all prosecution matters; and the courts adjudicate on and sentence offenders. Other than police-led disposals (cautions and warnings), the most common disposals are PPS or court-ordered youth conferences delivered by the Youth Justice Agency on restorative justice principles. A dedicated Youth Court deals with contested and more serious cases with community disposals delivered by the Youth Justice Agency and the Probation Board for Northern Ireland. A small number of young people are committed to custody each year either in the Woodlands Juvenile Justice Centre or in the Young Offenders' Centre at Hydebank Wood, an adult prison establishment operated by the Northern Ireland Prison Service.

The formal youth justice system is supported by a strong and active voluntary and community sector in Northern Ireland. Much of their work is aimed at preventing offending and re-offending by supporting children and families in their communities.

Building on strengths

Overall, the youth justice system as it currently operates has a number of strengths. Notable among these are the development of youth conferencing, within which young offenders are made to account for their behaviour (often to their victims), and the high quality of the custody facility at Woodlands Juvenile Justice Centre. These both constitute exemplars of outstanding creativity, good practice and care. A further strength is the transformed police service which, in placing human rights at its core, has achieved broad community acceptance. However, while there is much to be positive about, there is also scope for improvement.

Early intervention

There is a need to focus more clearly on early intervention. It is now widely recognised that investment in the health, education and parenting of children during their early years has a measurable and significant impact on their future life chances, including their likelihood or otherwise of engaging in criminal behaviour. Northern Ireland professionals, communities and parents share this view. There are good, but often isolated, examples of early intervention practice; services should target areas of deprivation, successfully engage those most at risk and strengthen families and communities. More needs to be done to overcome the legislative, administrative and cultural barriers that prevent effective and sustainable inter-agency working and the pooling of resources. There is a need for Government at the highest level to grip this issue through a funded early intervention and prevention strategy, the setting of achievable outcomes and the development of arrangements for the delivery of joined-up services at the local level.

Policing

Much has changed in policing policy in Northern Ireland over the past decade for the better. This has also extended to how police relate to young people. The PSNI and the Northern Ireland Policing Board are to be commended for the work they have undertaken in this area; it is evident that there is some awareness of the importance of engaging with young people in a way that promotes mutual respect and understanding. However, this appreciation is not reflected in the Policing Plan, nor does it positively influence the attitudes and behaviour of police officers on the ground. There is still a large minority of young people who distrust the police and too many police officers who adopt a judgemental, prejudicial and antagonistic attitude towards them. Young people say they want the police (and not the paramilitaries) to 'police' their neighbourhoods and to protect them. This message, and its importance in the context of Northern Ireland, needs to be clearly understood, prioritised from the top and communicated widely.

Diversion and prosecution

In the main, it is not in the child's best interests to be brought into the criminal justice system. The police and the Public Prosecution Service both have key roles to play in providing a proportionate response to offending by children and young people, ensuring most are dealt with outside the criminal justice system. Prosecution should be reserved for those cases where it is necessary because of the nature, circumstances or seriousness of the offending or where guilt is contested. The first line of defence in responding to a child's misbehaviour must be the parents or guardians, who should be fully supported to carry out their responsibilities where necessary. It was an almost unanimous view among contributors to the Review that the system should reinforce this responsibility. The developing use of police discretion, subject to certain safeguards, also has an important role to play in this regard, as do community based restorative and multi-agency welfare interventions.

Since the transfer of prosecution decisions from the PSNI and the introduction of diversionary youth conferences in 2003, the PPS has been charged with making decisions around prosecution and diversion. More young people are now diverted than are prosecuted. That is to be welcomed. However, the processes, means and style of communication the PPS use with the young need to be amended to encourage early compliance with a diversionary option and to help prevent the substantial number of unnecessary referrals to the Youth Court for prosecution. Incorporation of the UNCRC 'best interests' principle in the prosecution code and specialised training for all legal professionals are both recommended.

Bail and remand

There are strict legal criteria, reflecting international standards, pertaining to the deprivation of liberty, particularly with respect to children. The presumption of innocence requires children accused of committing offences to be released pending trial, except under very specific circumstances. In Northern Ireland, a disproportionate number of children are remanded in custody, both in comparison with adults and in comparison with other similar countries. To ensure custody is used as a last resort, there should be a general presumption of bail without conditions; bail information and support and supervision arrangements should be available at first court hearing; and all young people and their parents should participate in this process. Where bail conditions are set, they should be realistic, proportionate and relevant. The practice of using the Juvenile Justice Centre as a place of safety for PACE purposes should be reduced to an absolute minimum; and the current work to reduce the disproportionate number of looked after children in custody should continue and expand.

Youth conferencing

Restorative justice now plays a crucial part in the response to youth crime in Northern Ireland. Now internationally renowned, youth conferences offer an inclusive, problem-solving and forward looking response to offending in which the victim plays an important role. Re-offending rates are lower than for most other sanctions and victim satisfaction is high.

However, even with successful initiatives, fine tuning is needed to ensure that direct victim attendance is maximised, plans are relevant and proportionate and the incidence of multiple youth conferences is reduced through greater use of discretion by conference co-ordinators. Delay in the system also needs to be tackled robustly if offenders and victims alike are to gain the full benefits of the restorative process.

Youth Court

Following the recommendations of the Review of Criminal Justice in 2000, the Youth Court has become a less formal and more child-friendly environment, but the lack of specialisation and the prevalence of poor communication remain a concern. Despite good guidance, what is meant to happen in court is too often not what actually happens. Defendants and their parents are largely ignored and lawyers do not always act in the best interests of their clients. This undermines the effective delivery of justice. Greater specialisation, better training and greater compliance with NICTS guidance are all recommended, along with a single youth court jurisdiction.

Delay

The delay that permeates the entire criminal justice system is by far the most serious challenge we identified. Youth conferences and Youth Courts take, on average, 260 days to reach decisions from the date the young person was charged or summonsed. Long delays affect every part of the system, from bail and remand to sentencing and rehabilitation. It denies justice to victims and defendants, undermines human rights and erodes confidence in the criminal justice system and the rule of law. Despite considerable endeavours to tackle the corrosive effects of delay, progress has been decidedly modest if indeed discernible. It impacts more significantly on children than adults and should be addressed in the youth justice system first, with the lessons learnt being subsequently applied to the adult criminal justice system. A step-change is needed to secure real change. A statutory time limit from arrest to sentence/disposal of 120 days is suggested as a necessary (but not sufficient) condition for reform.

Custody

We commend the steep fall over the last 15 years in the overall number of young people held in custody and highly approve of Woodlands, the new Juvenile Justice Centre operated by the Youth Justice Agency. An excellent facility that combines high levels of unobtrusive security with equally high levels of care and professional practice, it is however too often used to accommodate young people who may pose no threat but have nowhere else to go or cannot comply with onerous bail conditions. The over-use of custodial remands, the disproportionate number of looked after children in custody and the use of an adult prison establishment, Hydebank Wood, to accommodate some of the more serious young offenders are also of concern.

Those young people held in Hydebank Wood should be transferred to the Juvenile Justice Centre over a period of 18 months following acceptance of this recommendation. Special provision (within the children's estate) should be made for the small number - two or three at any one time - of dangerous offenders.

Reintegration and rehabilitation

The high reconviction rates of young offenders serving custodial sentences are a reflection, in part, of the lack of adequate preparation for release, from day one of entry, and continuity of support post release.

In a worsening economic climate, where rates of youth unemployment are increasing, effective reintegration – which relies heavily on accessing education, training and stable employment – becomes more difficult. This is not made any easier when the only entry on a young person's CV is their criminal record. Poor choices and adolescent misbehaviour in early life should not blight a young person's prospects and life chances forever. Rehabilitation policy and legislation therefore needs to be overhauled to reflect the principles of proportionality and minimise the counter-productive impact of a criminal record on desistance from offending. On reaching the age of 18, an opportunity should be given to some young offenders to start again with a clean slate.

Special groups

A variety of specific groups of young people, especially looked after children and those with mental health and substance misuse problems, are over-represented in the criminal justice system and in custody. Agencies working with children and young people must carry out better assessments and make better provision for these groups.

Strategic and practical arrangements for delivery

The importance of investing in the current generation of young people as part of the peace process cannot be overestimated. We suggest that the First and deputy First Ministers and Ministers of Departments with key responsibilities relating to children need to commit themselves to prioritising children's issues and re-energising the Government's 10 year Children's Strategy.

Children who offend may receive targeted interventions from the criminal justice system but they should not, by virtue of this, be disconnected from the support and services available from universal providers. This general principle needs to inform joined-up thinking, policy and practice at the strategic, commissioning and delivery levels.

At the local level, services for children and young people, including those who offend, should be delivered by multi-agency teams overseen by and accountable to the Children and Young People's Strategic Partnership (CYPSP). Policy and professional practice relating to children should be child-friendly and not adult-centric and build on the success of the youth and community sector. The Criminal Justice Delivery Group, chaired by the Minister of Justice, along with the Criminal Justice Board, need to develop a greater strategic interest in youth justice and the connections with the wider children's strategy and delivery issues.

Children's rights and international standards

Our terms of reference require us to have regard to international obligations. In general, there is in Northern Ireland a clear understanding of the importance of respecting and promoting the rights and interests of every citizen. With respect to youth justice, there are still challenges, as pointed out by the UNCRC Committee in 2008. Taking the Committee's concerns into account, we think Article 3 of the UN Convention on the Rights of the Child, which establishes the principle of the best interests of the child as a primary consideration, should become part of the principal aim of the youth justice system and be explicitly reflected in policy and professional practice.

The minimum age of criminal responsibility, which is 10 in Northern Ireland, is an emotive issue. Age 10 is low by comparison with most other countries. International treaties have suggested it should be higher, and certainly not lower than 12. Scotland and the Republic of Ireland have recently raised the age (with some minor provisos) to 12. We suggest it should also be raised to 12 in Northern Ireland with consideration given after a period of time to raising it further to 14. The small numbers of children below these ages involved in offending still need support and discipline and to be held to account for their behaviour, but this should not be through a criminal justice process that further damages them.



PART A:

REVIEW OF YOUTH JUSTICE

Chapter 1: Introduction

1.1 Background

Having an effective and efficient youth justice system is vital to secure the safety, rights and wellbeing of children and young people, victims and the wider community. Although most young people's offending is of a fairly minor nature and few young people continue offending beyond their teenage years, those who become involved in wrong-doing run the risk of becoming life-time criminals, ruining their own lives and those of others against whom they offend. An effective youth justice system is one that prevents offending by young people, ensures that the rights of victims, young people and the wider society are protected and does this in the most efficient way possible.

The Hillsborough Castle Agreement of 5 February 2010 opened the way to the devolution of policing and justice powers to the Northern Ireland Assembly and a local Minister of Justice. It set out its key priorities for a devolved criminal justice system and how these might be achieved. One of these actions was to review *"how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice"*. In furtherance of this, David Ford, the Minister of Justice, launched an independent review of the youth justice system in Northern Ireland on 1 November 2010¹.

This is one of a series of reviews commissioned by the Department of Justice, with others addressing prisons, criminal records, bail, access to justice and community safety. On the whole we have attempted to avoid duplication with other reviews, although there are one or two places in our report where we have endorsed a finding and/or recommendation of one or other of these reviews.

1.2 The Review Team

The Review Team comprised John Graham (Director, Police Foundation) as chair, together with Dr Stella Perrott (retired senior official in the Scottish Government) and Kathleen Marshall (formerly Commissioner for Children and Young People in Scotland). Details of our respective professional backgrounds are set out in Annex 1.

¹ <http://www.niassembly.gov.uk/record/reports2010/101101.htm#a5>

1.3 Terms of Reference

The preamble to the Review Team's outline terms of reference, which were published at the time the review was announced, emphasised the need *"to stand back and take a critical look at where we are and what we need to do to further refine and improve our approaches to addressing youth offending, in the context of fully devolved arrangements and a financially uncertain future"*. To that end, and in furtherance of the Hillsborough Castle Agreement, the Review Team was asked to cover:

- existing processes, partnerships, interventions, structures and strategic linkages;
- legislation relating to the various statutory interventions;
- the balance of emphasis between prevention, effective intervention and re-integration and the associated systemic and cross-cutting issues;
- good practice within Northern Ireland and beyond; and
- information sharing and management arrangements between agencies and the measurement of outcomes.

The Review was also required to give particular regard to the statutory aims of the youth justice system; international obligations in this area; the effective use of available resources; improving the responsiveness and effectiveness of the system and its inter-connectedness to other systems; preventing and reducing offending and re-offending; improving outcomes for young people, victims and the wider community; and protecting the rights of everyone involved.

1.4 Reference Group

An independent Reference Group was appointed to provide additional expertise on which the Team could draw. The members of this group are listed in Annex 2.

1.5 How we approached our task

We sought to review the system against the best evidence of what is known to reduce offending and protect the public and the highest international standards of rights for victims and for offenders. Each of us has extensive experience in the fields of criminal justice and the law, domestically and internationally, in relation to children and young people. However, while we have a strong combined knowledge-base around these issues, none of us were familiar with the arrangements in Northern Ireland when we embarked on this task. We agreed as a Team that we should adopt a listening and consultative approach.

We considered the research evidence and consulted the widest possible range of stakeholders to gather views, comments and insights both on how the system currently operates and how it could be changed for the better. We did this in a number of ways:

- An early call for issues on which the Team might focus.
- A formal call for written submissions to the Team.
- Meetings with children, young people and members of the communities where they lived.
- Commissioning of consultation exercises to obtain the views of specific groups and constituencies.
- Bi-lateral meetings with public representatives and organisations operating in the statutory, voluntary and community sectors.
- Workshops and round-table events.
- Commissioning of advice and input from the independent Reference Group.
- Drawing on research and statistical information where relevant and available.

With the benefit of these many meetings and engagements, we have learned much about the criminal justice system in Northern Ireland and how it relates to children and young people. Details of all the individuals and organisations who so willingly gave up their time to talk to us and to whom we are indebted, are shown in Annex 3.

A number of papers were produced in evidence for, or developed during the course of, the Review to inform and advise the exercise. A list of those which will be published alongside this report is at Annex 4.

In reviewing the system against international standards, we have given particular weight to the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC), where they are significant in relation to particular issues. An extensive analysis of children's rights and international standards is available as a separate document.

1.6 Structure of this Report

The core of this report, which presents our professional judgement on the Northern Ireland youth justice system, reflects what we found that works well and should be built on; what does not work so well and could be improved; and how we think that could be achieved. Following this introductory chapter, Chapter 2 gives a concise description of the current system. Chapter 3 sets out our assessment of the system. Chapter 4 addresses the strategic and practical arrangements for delivering the reforms we recommend. And finally Chapter 5 discusses children's rights in

the context of international obligations and the minimum age of criminal responsibility. Our recommendations are accompanied where possible and relevant by an indication of our view on responsibility for implementation and associated timescales.

1.7 General Comments

We have done our best to identify and highlight not just the weaknesses in the system but also its strengths. We were fortunate to find ourselves in the position of discovering much that is good and should be lauded. We uncovered some excellent practice, such as the placing of restorative justice at the heart of the youth justice system, and Woodlands, Northern Ireland's state-of-the-art Juvenile Justice Centre. But equally we were shocked by the unconscionable time it takes to process a child through the system.

We are fully aware that Northern Ireland is a society in transition and have great respect for the amount that has been achieved since the Good Friday Agreement to improve its democratic institutions and put its troubled past behind it. But we are equally aware of the fragility of this transition. Our approach to the task has been underpinned by our firm conviction that the progress that has been made must be protected against any attempts by paramilitary groups within Northern Ireland to undermine it.

Chapter 2: What the Current System Looks Like

To help the reader, we briefly describe here the existing system for dealing with children and young people who offend (or who may be at risk of offending). Those familiar with the youth justice system in Northern Ireland may like to move straight to our assessment, which starts with Chapter 3.

2.1 Aims of the youth justice system

The stated principal aim of the youth justice system in Northern Ireland is to protect the public by preventing offending by children². All persons and bodies exercising functions in relation to the youth justice system must have regard to that principal aim in exercising their functions, with a view (in particular) to encouraging children to recognise the effects of crime and to take responsibility for their actions. All such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions and to the general principle that any delay in dealing with children is likely to prejudice their welfare, with a view (in particular) to furthering their personal, social and educational development.

2.2 A separate system for children

In recognition of the now widely accepted evolving capacity of children in terms of their moral understanding, reasoning capacity and experience of life and that children are more likely to change their behaviour than adults, Northern Ireland, like other developed countries, has separate arrangements for dealing with children who enter the criminal justice system, including dedicated youth courts and different sentencing options.³ The Youth Court deals with almost all youth cases (approx. 98%) although a small number of children are tried in adult courts (i.e. the Crown Court). We say more about the Crown Court below.

2.3 Age limits

In Northern Ireland, the minimum age of criminal responsibility is 10. Where children under that age are involved in wrong-doing, their behavioural issues can be addressed through family, social and educational means outside the criminal justice system. At the age of 18 young people enter the adult justice system, therefore for the purposes of this report, “young offenders” are those aged 10 to 17 inclusive.

² Section 53 (1) Justice (Northern Ireland) Act 2002.

³ There is now also scientific evidence relating to brain development during adolescence and the early adult years to support the view that children and young people should be treated differently from adults by the criminal law. Rutter, M (2010) *Causes of offending and antisocial behaviour*. Smith, D. J. (ed.) A New Response to Youth Crime. Willan Publishing.

2.4 Offending patterns

On the whole, offending by young people tends to be less serious than by adults. The value of goods stolen tends to be smaller, the assaults less serious, and young people are less likely to be involved in offences such as fraud or drug trafficking. Common offences committed by young people include criminal damage, theft and common assault, a pattern that is found across the UK and internationally. Assaults by young people tend to be on other young people rather than strangers or family members. More serious assaults may involve a weapon but more usually do not. Thefts by young people tend to be mainly shoplifting, including the theft of alcohol. Possession of an offensive weapon (or use of a weapon) is comparatively rare, in contrast to the rest of the UK.

Table 1: Offending by Young People by gender (2009)

	F	M	Total	% of Total
Violence & Assault				
Common Assault	593	1,019	1,612	16.48%
AOABH	183	474	657	6.72%
GBH	15	113	128	1.31%
Threats to kill	27	66	93	0.95%
Aggravated Assault	38	23	61	0.62%
Drugs & Alcohol				
Alcohol Related	99	191	290	2.96%
Drugs	26	264	290	2.96%
Possession of Drugs	7	48	55	0.56%
Consuming Alcohol	14	30	44	0.45%
Possession of Alcohol	1	7	8	0.08%
Purchasing Alcohol	3	4	7	0.07%
Damage to Property				
Criminal Damage	189	1,242	1,431	14.63%
Arson	4	51	55	0.56%
Police & Public Order Related				
Public Order Related	10	269	279	2.85%
Disorderly Behaviour	87	560	647	6.61%
Assault on Police	41	118	159	1.63%
Obstruction	6	23	29	0.30%
Hoax Calls	9	16	25	0.26%
Acquisitive Crimes				
Theft	713	995	1,708	17.46%
Burglary	40	441	481	4.92%
TADA	14	115	129	1.32%
Robbery	2	42	44	0.45%
Motoring	97	926	1,023	10.46%
Sexual Offences	27	213	240	2.45%
Offensive Weapon	6	138	144	1.47%
Miscellaneous				
Firework Related	2	106	108	1.10%
Breach of ASBO	1	26	27	0.28%
Cruelty	2	6	8	0.08%
Total	2,256	7,526	9,782	100%

Source: PSNI Juvenile Database

Note: The data in Table 1 shows the primary offence on each occasion so some young people appear on more than one occasion and have committed more than one offence. Year on year, these figures are broadly the same.

In any one year, up to 10,000 young people come into contact with the criminal justice system. This represents just 5% of the total population of young people in this age group.

Table 1 sets out the offences for which young people were dealt with in 2009 (the latest year for which figures are available). It is important to note that these data do not present a picture of all crime committed by young people but only detected crime.

2.5 Criminal justice agencies

A number of agencies are responsible for running the criminal justice system, each with their own responsibilities and separate lines of accountability:

- The **Police Service of Northern Ireland (PSNI)** has responsibility for the prevention and detection of crime;
- The **Public Prosecution Service (PPS)** has responsibility for prosecution decisions and the prosecution process;
- The **Northern Ireland Courts and Tribunals Service (NICTS)** has responsibility for supporting the judiciary in their role of adjudicating on offenders, determining guilt or innocence, and passing sentence on those found guilty;
- The **Probation Board for Northern Ireland (PBNI)** is responsible for supervising offenders in the community as well as providing Pre-Sentence Reports to courts;
- The **Youth Justice Agency (YJA)** has responsibility for the provision of community and custodial services to children who offend and those at risk of offending and for organising youth conferences.
- The **NI Prison Service (NIPS)** is responsible for the custody of a small number of male juveniles in Hydebank Wood Young Offenders' Centre.

With the exception of the Youth Justice Agency, all these agencies are responsible for dealing with adults **and** children, although they all have specific arrangements for children and young people. The PSNI, for example, operates a Youth Diversion Scheme with specially trained officers who provide a restorative framework for dealing with children and young people who come to their attention. Similarly, the PPS designates youth specialists to consider prosecution decisions in youth cases.

2.6 Voluntary and community sector

The formal youth justice system is supported by a strong and active voluntary and community sector in Northern Ireland. Much of their work is aimed at preventing offending and re-offending

by supporting children and their families in their communities. Services provided range from family support and mentoring to assistance in finding training and employment. Schemes often operate on a restorative basis, such as Community Based Restorative Justice (CBRJ) and the restorative practices which have developed in some children's homes and schools. We say more about this in the next chapter, which begins to set out our assessment of the system.

2.7 Police action

The role of the police is evolving in Northern Ireland, but broadly speaking, when a young person is caught for an offence, a number of options are available to the police. Essentially, they can exercise their judgement by taking no further action or, after preparing a report, refer the matter to the PPS for direction. On the whole, actions by the police have to be sanctioned by the PPS, but this too is evolving. A discretionary option is available if the offence is very minor and the young person admits their guilt, allowing mediation between the offender and the victim to seek to put matters right rather than to process the offence further.

2.8 Public Prosecution Service (PPS)

Where a case is referred to the PPS, they will determine whether the young person should be prosecuted, diverted from prosecution (where an admission of guilt has been made and the young person agrees to a diversion), or whether the case should be dismissed. Where a decision to divert the young person from prosecution is made, the young person may receive an **informed warning**, a **restorative caution** or a **diversionary youth conference**:

- An **Informed Warning** is administered by the police in the presence of the child and his or parents or guardians.
- A **Restorative Caution** is administered by the police. Victims may also take part with a view to enabling the young person to understand the impact of their behaviour.
- A **Diversionary Youth Conference** is organised by the YJA and managed by professionally trained conference coordinators (see below).

2.9 Bail⁴ and remand

If a young person is arrested for an offence but the police have insufficient evidence to charge them, they may be released either with or without bail or be detained under the provisions of the

⁴ Bail is currently the subject of extensive work by the Northern Ireland Law Commission, whose consultation paper sets out the law and the issues in full (Northern Ireland Law Commission. *Consultation Paper – Bail in Criminal Proceedings*. NILC 7 (2010)).

Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). The latter is only undertaken where the custody officer believes this is necessary to secure or preserve evidence or to obtain evidence by questioning the child. Once charged, the presumption should again be for release, either with or without bail, but the child may be detained if certain criteria apply, for example, if the custody officer has reasonable grounds for believing detention will be in the child's interests or to prevent further offending or failure to appear in court. Detention under PACE must be to a "place of safety", defined as any juvenile justice centre, hospital, surgery or other suitable place. There are some special provisions for younger children who have committed less serious offences.

When children come before the courts, they must be released on bail unless it is necessary to remand them to protect the public. A child under 17 who is not released will in most circumstances be remanded to the Juvenile Justice Centre (JJC). 17 year old boys are routinely remanded to the Young Offenders' Centre (YOC). However, there is some flexibility. 17 year olds can be sent to the JJC in prescribed circumstances, and it is also possible to remand boys from age 15 onwards to the YOC if they are likely to injure themselves or other persons.

2.10 Youth conferences

There are two types of youth conference: **Diversionsary Youth Conferences** (as above) and **Court-Ordered Youth Conferences**. The latter differ from the former primarily in that they are ordered by the Youth Court rather than the PPS. A Youth Conference is a meeting or series of meetings, involving the young offender, family members, agencies and, in most cases, the victim or a representative of the victim. They provide a forum for discussion about the offence and usually result in a conference plan that can include arrangements for an apology, reparation, compensation, service for the community, restrictions on conduct or whereabouts (curfews/electronic monitoring), or involvement in activities or programmes e.g. for alcohol or drug dependency.

The plan worked out at the conference must be approved by the PPS or, in the case of a court-ordered conference, a District Judge sitting in the Youth Court. If rejected, or if the young person fails to comply with the approved plan, the PPS can refer the case to the court (if it is a diversionary youth conference) or (in the case of a court-ordered conference), the matter is referred back to the Youth Court for formal adjudication. Diversionary youth conference disposals do not count as convictions but do attract a criminal record. A court-ordered conference results in a **Youth Conference Order**, which is a sentence of the Court and therefore constitutes a criminal conviction.

2.11 Youth Court

Youth Courts are held in 17 venues across Northern Ireland. In the busy courts, the youth court might sit several days a week but in more rural areas it might be fortnightly or even monthly. The Youth Court is comprised of a District Judge (Magistrates Court), who chairs the court, and two Lay Magistrates (one of whom should be a woman). The District Judge and the Lay Magistrates are all trained in youth court business. District Judges may also hear cases in the adult, family and civil courts. Lay Magistrates work in both the youth and family courts.

The court is generally run on less formal lines than the adult court. Wigs are not worn and the young person sits at a table rather than stands in the dock. The young person is usually accompanied by a parent (or a care worker if 'looked after') and is usually represented by a solicitor. There is no jury and decisions are made by a majority of the members. The Youth Court is not open to the public and, although journalists may be present, they cannot report anything that would reveal a young person's identity without prior permission from the District Judge.

On an admission or finding of guilt, the Youth Court is required, in the majority of cases, to offer a youth conference (see above). Where consent to the youth conference is not given, or where a conference may not be appropriate for other reasons, the Youth Court can, on conviction, order any of the disposals set out in Table 2. In these circumstances, the court may seek a pre-sentence report from a probation officer to help inform the decision.

Table 2: Youth Court Disposals

Absolute / Conditional Discharge	Finding of guilt with or without conditions
Fine	Limited to Level 3 on standard scale (i.e. £1,000).
Reparation Order	Up to 24 hours of direct reparation to the victim or the community.
Attendance Centre Order	12 – 24 hours at an Attendance Centre for programme work on addressing offending behaviour.
Community Responsibility Order	20 – 40 hours split between instruction in citizenship and relevant activity.
Youth Conference Order	Tailored conference plan with reparative / restorative theme – court ordered disposal
Probation Order	6 months – 3 years community supervision and can include specified requirements such as attending a particular programme
Community Service Order	Unpaid work from 40-240 hours in the community. Available for 16+
Custody Probation	Custody followed by a specified period of Probation supervision. Available for 16+
Juvenile Justice Centre Order	6 months to 2 years with half spent in custody and half under Probation supervision in the community.
Young Offenders' Centre Order	Custodial sentence of up to 4 years served in the Young Offenders' Centre, Hydebank Wood. Available from 16+
Other Custodial Orders	A range of determinate and indeterminate sentence for grave offences.

A Youth Conference Order can be combined with a period in custody but cannot be combined with any other order.

2.12 Crown Court

In 2008, the UNCRC Committee underlined the importance of ensuring that all children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults.⁵ In Northern Ireland, this is not always the case. If young offenders under the age of 18 are charged jointly with an adult, the trial may be held in the Magistrates' Court, but serious offences such as murder will usually go to the Crown Court, which is an adult court. Where the case is heard in the Crown Court, additional efforts are however made to ensure defendants are treated as a child (e.g. with reporting restrictions still in place and the removal of wigs and gowns). In practice the number of young people tried in the Crown Court is small – 54 in 2010 – which represents less than 2% of all disposals. Where a case is sent for trial at the Crown Court, to protect the child and ensure the court setting is appropriate, all such indictments are sent to the office of the Lord Chief Justice who personally inspects them and assigns an appropriate Crown Court judge to the case.

2.13 Custody

In Northern Ireland, children can be committed to custody either on remand or via a custodial sentence from the age of 10. In practice, very few children as young as 10 have ever been held in custody; the average age is about 16.

Young people sentenced or remanded to custody are mostly held at the Juvenile Justice Centre, known as Woodlands, which is operated by the YJA and located in Bangor. Woodlands is also used as a place of safety under the Police and Criminal Evidence Order (PACE) 1989 for the purposes of securing the attendance of a young suspect at the next available court hearing. From aged 16, young males can also be sentenced to custody at Hydebank Wood Young Offenders' Centre which is operated by the NI Prison Service. This establishment holds young males up to the age of 24 and all female adult prisoners. Juveniles are subject to a different regime and accommodated separately from adults in their own landings. No young females are held at Hydebank Wood.

2.14 Who's in charge?

The Minister of Justice is politically accountable for the overall system and its operation. He chairs the Criminal Justice Delivery Group⁶, which sets the strategic direction for the Criminal Justice System and holds to account the Criminal Justice Board, which comprises senior representatives of the main criminal justice organisations.

⁵ UN Committee on the Rights of the Child, Concluding Observations on the United Kingdom, 2008, para. 78(c).

⁶ Some members of the group are statutorily independent and have separate lines of accountability i.e. the Director of Public Prosecutions, the Lord Chief Justice and the Chief Constable.

2.15 Key milestones

Over the years, the youth justice system in Northern Ireland has developed significantly in terms of legislation, policy and practice. Key milestones have been:

- The **Children (NI) Order 1995** which provided separate legislation for those children in the care system to those in the criminal justice system;
- The **Criminal Justice (NI) Order 1996** which introduced restrictions on the imposition of custody for serious and persistent offenders;
- The **Criminal Justice (Children)(NI) Order 1998** which introduced determinate sentencing for children through a new custodial order, extending from 6 months to 2 years, split equally between custody and supervision in the community. It also established the Youth Court, the presumption of bail in youth cases and the Juvenile Justice Board as a forerunner to the Youth Justice Agency;
- The **Criminal Justice Review 2000** which was a comprehensive review of the operation of the criminal justice system in Northern Ireland and which recommended wide ranging and far reaching changes to the system, in particular the introduction of restorative practices;
- The **Justice (NI) Act 2002** which established the aim of the youth justice system in statute, introduced youth conferencing at diversionary and court level, and brought 17 year olds within the ambit of the youth justice system.
- The **Criminal Justice (NI) Order 2008** which had the practical effect of removing girls from adult custody and removed inconsistencies between rehabilitation periods for different youth court disposals.

Chapter 3: Our Assessment of the System

3.1 General Comments

The preamble to our terms of reference states that:

“Northern Ireland has seen much change for the better over the past 10 years, following the Criminal Justice Review, and there is much to be proud of in what has been achieved. However, in the complex area of youth crime, challenges remain and there is scope for further improvement.”

Over the course of our review this is more or less what we found across the justice system and more widely. We certainly found many positives at all levels and we think it is important to recognise and celebrate this fact. Inevitably however we also came across areas where we thought improvement was both necessary and possible.

3.2 Scope and structure of this chapter

We felt that in the time available it would not be possible to cover every aspect of what is a very complex and wide ranging system and that we therefore needed to focus on the most important issues. We were also keen to ensure that our report is clearly presented and easily accessible to a wide range of audiences, including children and young people themselves. We have therefore broadly organised our assessment around the different stages of the system, from early intervention and prevention through to post-custodial reintegration. An additional section looks at specific groups of children who are over-represented in the youth justice system, such as looked after children and those with mental health problems. This chapter, which constitutes the main part of our report, is therefore set out under the following headings:

- Early intervention and prevention
- Policing children and young people
- Diversion and prosecution
- Bail and remand
- Youth conferencing
- The Youth Court
- Delay
- Custody

- Reintegration and rehabilitation
- Special groups

3.3 Early intervention and prevention

3.3.1 Introduction

"Me da spent years in custody and now I am. It breaks me ma's heart."

Our terms of reference include the requirement to have regard to *a financially uncertain future*. Investments that provide long-term benefits and reduce expenditure further down the line should be given serious consideration. This is particularly so with early intervention to prevent problems from occurring in the first place.

It is now widely recognised that investment in the health, education and parenting of children during their early years has a measurable and significant impact on their future life chances, including their likelihood or otherwise of engaging in criminal behaviour. A substantial body of research exists that demonstrates not only what makes it more or less likely that children will behave antisocially or criminally, but also what interventions are most likely to prevent them doing so and what the savings are to the taxpayer of such investments. In recognition of this robust evidence base, the Council of Europe recommends that governments of member states (which include the UK) introduce and promote national strategies of early intervention for the prevention of criminality⁷. This was reaffirmed by the UN Committee on the Rights of the Child in 2007⁸.

3.3.2 Key drivers of crime and anti-social behaviour

It is now well known, from research conducted worldwide and over many years, what the main drivers of crime and antisocial behaviour are. They include poverty, broken family relationships, childhood abuse and/or neglect, inconsistent and harsh discipline at home, a family history of problematic and/or criminal behaviour, poor cognitive skills, low educational achievement and exclusion or truanting from school. The same factors also drive other adverse outcomes such as poor health, poor educational and employment prospects, future poverty and future difficulties in parenting.

⁷ Council of Europe: Recommendation (2000) Rec. 20. *"The role of early psychosocial intervention in the prevention of criminality."*

⁸ UN Committee on the Rights of the Child, *General Comment No. 10 on Juvenile Justice* (2007).

Some communities have higher rates of crime and antisocial behaviour than others. Most often it is those neighbourhoods with high concentrations of deprivation, poor housing, multi-problem families and poor schooling coupled with a lack of social and community capacity to deal with them. Offending by young people is often at its height at certain times – for example on the way to and from school – and in certain places – for example shopping centres or run-down housing estates. The influence of families tends to be greater in the early years while community and peer influences become stronger from adolescence onwards.

3.3.3 Cost-effective prevention: what works?

Drawing on the best current evidence (for an overview see footnote⁹) a preventative approach to reducing crime, antisocial behaviour and other social problems would include:

- strengthening parenting capacity through targeted, sustained, home based support, for example through **Family Nurse Partnerships**, parenting programmes such as **Triple P** or the Incredible Years and intensive programmes of work with families in difficulty using **Multi-Systemic Family Therapy**;
- tackling domestic abuse through supporting victims to leave abusive relationships, the provision of safe housing, advocacy and placing legal constraints on the perpetrator;
- pre-school play and education provision coupled with family support for children at risk, for example through some **Sure Start** programmes or the **Perry Pre-school Programme**;
- building strong relationships between schools and young families with home-school support for children at risk of truancy or exclusion or who are likely to struggle with the transition from primary to secondary education;
- whole school approaches to reducing problematic behaviours such as violence and bullying, both within school and beyond the school walls;
- school based skills development in problem solving, thinking and self- control;
- community based programmes that increase young people's resilience through organisations such as **Communities that Care**;
- intensive job preparation courses for young people who have fallen behind or who are not attending school.

⁹ NIO (2008). *Reducing Offending: A Critical Review of the International Research Evidence*. NIO Research and Statistical Series No. 18. CJSNI.
Allen, G. and Smith, D. (2008). *Early Intervention: Good Parents, Great Kids, Better Citizens*: Centre for Social Justice and The Smith Institute.
Heckman, J. and Masterov, D. (2007). *The productivity Argument for Investing in Young Children*: <http://jenni.uchicago.edu/Invest/>
Action for Children and New Economics Foundation (2009). *Backing the Future: why investing in children is good for us all*.

All of these approaches have been shown to have some measure of success in reducing the risk of offending and other problems. Key to their success is early but proportionate intervention which is non-stigmatising. To be cost-effective, services need to target areas of deprivation, successfully engage those most at risk, strengthen family and community capacity and be sufficiently joined up to impact holistically on a wide range of inter-connected risk factors. Measures to prevent offending by children in isolation from other problems they, their families and their communities face have not proved successful while approaches that involve agencies and communities working in concert have had better results. Too often those families that most need support are the least likely to avail themselves of it. Family visiting, intensive one-to-one support and outreach work may all be needed. Occasionally, where a child's behaviour remains seriously problematic and parents will not engage with services to help them, coercion may be necessary.

3.3.4 Designing and implementing early intervention strategies

As mentioned above, the Council of Europe recommends that all Member States should devise and implement a strategy of early intervention to prevent criminality. In Northern Ireland, despite the plethora of government strategies that have emerged since the Good Friday Agreement, no such strategy exists. There is for example a ten year strategy for children and young people, a children's services planning process, an early years strategy and a supporting families strategy, all of which give some priority to supporting families at risk. There is also a community safety strategy, which is currently being consulted on. However there is a degree of ambiguity over who should be responsible or take the lead in prevention and early intervention services within government, with the links between these strategies unclear. The agencies and professionals we spoke to all thought preventive initiatives needed to be located within a more strategic approach to identifying need and commissioning services to meet it, rather than the somewhat ad hoc approach that currently operates. As a consequence, they believe that more children than is necessary are being drawn into the criminal justice system.

In an ideal world, governments should direct greater investment towards those universal services, such as social services, education, health and leisure, which are most likely to promote social inclusion, prevent offending and deliver better outcomes for children and young people. Given the limitations imposed by funding constraints, which are likely to worsen in the foreseeable future, a more likely scenario is to target resources to those communities, families and children most at risk. Despite the absence of a clear strategic direction, we found this to be happening, albeit in a rather piecemeal and uncoordinated way, at the more local level.

Every locality has a range of services designed to support parents and children in difficulty. These include parental support projects, after school clubs providing therapeutic support to build self esteem and confidence, peer support and mediation, sure start services and transition clubs to support children moving from primary to secondary school. There is also a Parenting Helpline and parenting programmes run by the Parenting Advice Centre, Barnardos and others.

3.3.5 Best practice

We identified three particular schemes as exercising, together, the capacity to identify those children at risk of future offending and to intervene early and effectively to turn around developing problems. These are Family Nurse Partnerships¹⁰ which are being piloted in Northern Ireland; the three 'full service' schools which have developed a 'whole child' approach to learning and development and keeping children in school; and the Early Intervention for the Prevention of Offending projects for 8-13 year olds. In recognition of the requirement to identify best practice, we commend all three of these initiatives.

As far as we can tell the last of these is the only early intervention initiative explicitly aimed at preventing crime and antisocial behaviour. The Health and Social Care Board established 5 of these projects in 2008 and two years later, the report of the evaluation¹¹ shows positive improvements in the lives of families who participated in the projects. While it is too early to note any longer term outcomes, short term outcomes such as better behaviour, better school attendance and better parental capacity to deal with poor behaviour was reported. The cost of each referral was, on average, £4,600, which compares very favourably with the cost of holding a young person in custody – this amount would purchase little more than a week in Woodlands Juvenile Justice Centre.

Overall, we found a good mix of provision run by a range of providers and some confidence in the services provided, but it is not always clear how entitlement is determined. Agencies seem to have a good understanding of how their work could potentially prevent future offending and other poor outcomes, but varied in their capacity to secure funds for it. Health agencies, for example, were clearly aware of the preventive role that Family Nurse Partnerships could play and were keen to promote them, whereas education, with the exception of full service schools, did not appear to us to be fully signed up to the idea of working with other agencies to prevent crime. In most localities, insecure funding and a lack of joined up service provision means that not all children get the help they need when they need it.

10 Olds, D. (2002). *Prenatal and Infancy Home Visiting by Nurses: From Randomised Trials to Community Replication*. Prevention Science, Vol. 3. No. 3. September 2002.

11 Independent Research Solutions (2010). *An Evaluation of the Early Intervention Programme for the Prevention of Offending*.

3.3.6 Parents' concerns

Most of the adults we spoke to saw children's misdemeanours as being a normal part of growing up but thought that poor parenting was to blame for more serious problematic behaviour. Many said that some children 'don't know right from wrong' or that parents 'allowed their children to run wild'. Some thought such parents were disinterested in their child's behaviour and reluctant to take action while others thought the parents lacked the skills to parent well.

In our discussions with parents, it became clear to us that many were anxious about the risk of their child getting into trouble and were trying to do all they could to prevent it. Others had children whose behaviour was already seriously problematic and had almost given up. In some cases parents had sought help, but had been told that help could not be provided until their child had been caught committing a serious enough offence to warrant prosecution. In other cases sustained effective help was only provided when the family faced being driven out of their homes by neighbours or the paramilitaries. Sometimes help had been offered but it was not until circumstances forced parents to engage more fully with what was on offer that progress was made. In these cases the parents often did not understand just how serious their child's behaviour was perceived to be by the local community.

Provision for preventing offending and supporting those struggling to parent well is piecemeal and evaluation is limited¹². For most of those in difficulty the route to gaining help is neither clear nor guaranteed, with some parents sometimes being passed from one agency to another. Parents told us that support should be available as soon as it was needed, but they believed there were insufficient parenting programmes for families in difficulty. This view is also echoed in the responses to the Department of Justice on the recently published draft Community Safety Strategy¹³.

12 KPMG. (2009). *Research and Evaluation of Youth Intervention Scheme*: OFMdFM.

13 Department of Justice (2011). *Building Safer Shared and Confident Communities; a Consultation on a new Community Safety Strategy for Northern Ireland: Summary of Responses*.

3.3.7 The way forward

In its Recommendation on Early Intervention, the Council of Europe states that programmes should respect the privacy and integrity of children and their families, take account of the principles of proportionality, non-stigmatisation and non-discrimination. In our discussions with key agencies, these principles were clearly recognised. While most of the professionals we consulted were of the view that the Department of Justice and justice agencies should be involved in jointly funding programmes, early intervention services should be delivered on the ground by trusted voluntary agencies working in partnership with universal service providers such as health or education.

The most promising route for developing early intervention and family support would seem to be at the more local level, through the recently formed Children and Young People's Strategic Partnership (CYPSP). This is led by the Health and Social Care Board, on which all the relevant agencies who work with children are represented (we say more about the CYPSP in Chapter 4). This view was also shared by those responding to the community safety proposals, who thought the community safety strategy should be integrated with the work of the CYPSP.

Although most government departments and local agencies stand to gain from investing in early intervention and prevention, there are a number of barriers that need to be overcome. Most funding is provided for the maintenance of current services and the meeting of statutory responsibilities rather than for achieving outcomes and identifying and disseminating effective practice. There are also legislative, administrative and cultural barriers to pooling resources. Shifting resources from dealing with the consequences of problems rather than their prevention will take a concerted effort and will require strong leadership.

One of the most persuasive examples of why governments should invest more in early intervention was produced by the Audit Commission in its assessment of the Youth Justice reforms in England and Wales in 2004. It estimated the lifetime costs to the taxpayer incurred by James¹⁴, a young man who, at the age of 15, was sentenced to custody for the second time. Last year, the Independent Commission on Youth Crime and Antisocial Behaviour updated James' story to reflect current costs and is reproduced in full below:

¹⁴ Although based on a real case, the name has been changed to protect the young person's identity.

James' story

- James's mother first reported behavioural issues at home when he started school at age 5. The family could have been offered support services and guidance from an educational psychologist (cost £2,900). Yet no action was taken.
- Later concerns at school about his slow learning, communication difficulties, poor attendance and behaviour resulted in assessment and monitoring by an educational psychologist. Speech and language therapy, family support and educational psychology sessions could have been offered (cost £1,988) but were not.
- Further challenging behaviour and low attainment resulted in a formal Statement of Special Educational Needs and placement in a special school (cost, £8,761). There were also concerns that he was being left at home alone by his mother in the evenings. A multi-agency school inclusion plan, family support to tackle the neglect issue and anger management sessions, might have provided a more effective, mainstream alternative (cost £3,907).
- Although involved in an arson attack at age 10 and cautioned for handling stolen goods and shoplifting (policing costs £1,635), James attended school and appeared to be making progress. It was suggested he would benefit from a personal learning mentor (cost over 36 weeks, £14,190), but this was never acted upon.
- By the age of 13 he rarely attended school and his behaviour when he did led to fixed-term and informal exclusions. At an annual review meeting, James said he wanted to return to a mainstream school. Neither this, nor renewed proposals for a learning mentor were implemented.
- A few months later, he became involved with the Youth Offending Team (cost £1,608) after being prosecuted for criminal damage (cost £9,811). An alternative education package required his attendance part-time at school and two different off-site units (cost £4,509). Alternative family support and continuing support from a learning mentor at this stage might have cost £8,120.
- After a few more months, the education arrangements broke down. James was involved in an assault on a girl and arrested for stealing a bicycle. He was then involved in a theft from his own home. Only at this stage was a family assessment carried out over concerns about neglect raised by the YOT. A proposed referral to a local adolescent resource centre (cost £2,270) was made and subsequently repeated, but James never received that help. Other support services that might have helped keep him in school (cost £4,596) were not even proposed.
- James was shortly afterwards placed under intensive supervision and surveillance for taking a car. Referrals were made to family support and child protection services amid claims that he was out of control and that his mother was not living at home.
- By the time he was 14, James had breached his court order, resulting in his first custodial sentence (cost £57,896). He made educational progress at his secure unit, but refused the home tuition that was offered when he returned home. He made an allegation of abuse that led to a child protection strategy meeting. The outcome was overtaken by his second custodial sentence when he, again, breached his intensive supervision requirements and was sentenced to immediate custody.

The total estimated cost to public services of dealing with James's increasingly problematic behaviour was more than £173,000. By contrast, the costs of preventive action that could have protected James and kept him in mainstream education until school leaving age add up to £47,500 – less than just one of his two spells in custody priced at nearly £58,000 each.

In Northern Ireland, we believe the youth justice system is similarly populated by young men like James, who we met and spoke to over the course of our review. In the main, they had ended up in prison for the same reasons as James – an absence of effective, early interventions at times in their lives when they really needed them. It is said that the current economic climate is not conducive to investing in programmes that only deliver long term outcomes. But in times when public spending needs to be carefully targeted at investments that deliver good returns, even if only in the longer term, James' story offers a convincing case.

Many of those we consulted thought that, without strong leadership from the top to ensure top-slicing departmental and agency budgets, shared approaches to early intervention and prevention would remain ad hoc and at the periphery of service provision. We urge the Northern Ireland Executive to secure the economic as well as multiple social policy benefits from developing a more strategic and better funded programme on early intervention and preventative spending.

We therefore recommend that:

- 1. As part of a revised and reinvigorated children's strategy (see Chapter 4), the NI Executive should develop an early intervention and prevention strategy, to be delivered locally through the Children and Young People's Strategic Partnership. The strategy should include a set of achievable outcomes and be accompanied by guidance on how agencies and the voluntary sector should work in partnership to deliver it, based on best practice.***
- 2. The NI Executive should determine how best to secure funding to invest in early intervention and prevention.***
- 3. To support this shift in resource allocation and investment we recommend that the NI Executive sets up an Early Intervention Unit. This cross cutting, inter-departmental Unit should:***
 - a. co-ordinate policy and ensure priority is given to early intervention across all relevant government departments;***
 - b. identify and remove barriers to pooled funding and collaborative working;***
 - c. disseminate evidence of good practice and co-ordinate research and evaluation on early intervention for 0-13s;***

- d. oversee the development of guidance and standards (and where appropriate accreditation) for early intervention and prevention programmes and initiatives;***
- e. explore further funding options with public, third sector and private sector providers.***

3.4 Policing children and young people

3.4.1 Introduction

One of the most crucial achievements of the peace process has been the transformation of policing in Northern Ireland following the publication of the Patten report in 1999.¹⁵ There are now opportunities for the police to engage with all communities in ways that would have been unimaginable only a relatively short time ago. Public confidence in the new policing arrangements is high and improving: whereas in 2003/04, 73% of a sample of the public had confidence in the new arrangements, by 2007/08 this had risen to 79%. We have also heard for ourselves that the police are now more likely to be trusted and accepted.

That said, it is evident that some of the entrenched problems have not gone away. Sad echoes of Northern Ireland's troubled past still remain with the continuing operation of paramilitaries in both communities. This has had the inevitable effect of pushing the police to adopt a more overtly security-conscious response which has also adversely affected their ability to develop a more open relationship with young people in those communities. Where normal policing is diminished, the influence of violent and anti-social groups is enhanced. The current young generation – the first since the Good Friday Agreement to experience the benefits of the peace settlement – are the very same people who will determine whether the settlement lasts and we firmly believe that how the police behave towards them is a crucial determining factor in this.

3.4.2 Relations between young people and the police

The first contact that young people make with the youth justice system, whether as victims or suspects, is through the police, who act as the main gateway to the system. How the police communicate and interact with young people and what decisions they take can be a powerful determinant of young people's attitudes towards the police, the criminal justice system and the State, and subsequently in securing their co-operation and support. Positive interaction and engagement with young people based on mutual respect and understanding, with the police modelling positive behaviour, can influence offender's attitudes towards offending and help the

¹⁵ Independent Commission on Policing, (1999). *A New Beginning: Policing in Northern Ireland*.

police to identify and resolve crime problems. Article 40 of the UNCRC insists that children in conflict with the law be treated in a way that promotes the child's sense of dignity and worth and reinforces the child's respect for the rights of others. Behaviour that fails to meet these standards can have the opposite effect: building hostility towards the police and the rest of the criminal justice system, undermining efforts to turn offending around and pushing young people further into the system.¹⁶

It is now more than ten years since the Patten report drew attention to this issue:

"...people who described themselves as working class characterized the police as middle class people who found it hard to relate to them, and especially to youth; we were told several times that it was felt the police looked down on them and did not treat them with respect. Our public attitudes survey found that 45% of those aged under 35 believed that the police discriminated against younger people."¹⁷

Our discussions with young people, which mirror the findings of the Criminal Justice Inspection Northern Ireland (CJINI) and the Northern Ireland Policing Board (NIPB), suggest that too many officers are still adopting a judgemental and prejudicial, even antagonistic attitude towards some of the young people they encounter. In a recent Northern Ireland wide survey of young people under the age of 25, of those who reported contact with the police (70%), more than a third (38%) said they experienced disrespectful behaviour and just under a third (31%) reported being wrongly accused of misbehaviour. Nearly half (47%) said the police never treated them with respect.¹⁸

Other studies report similar findings. In a survey of 14-17 year olds carried out in North Belfast, two thirds (65%) reported that the police didn't understand the issues and problems experienced by young people and nearly half (43%) stated that the presence of the police at interface areas (between Protestant and Catholic communities) actually exacerbated incidents of sectarian violence in their area.¹⁹ A more recent study of 13-16 year olds across Northern Ireland found that some young people perceived the police as being against the community and as being particularly hostile towards young men.²⁰ If policing, particularly in these communities, is to achieve Patten's vision of a fairer, more transparent and more representative service, then it must do more to turn these perceptions around.

¹⁶ A point reinforced by the UN Committee on the Rights of the Child in its General Comment No. 10 on Juvenile Justice (2007).

¹⁷ Independent Commission on Policing, (1999). *A New Beginning: Policing in Northern Ireland*. pg 16

¹⁸ Nelson et al (2010). *Beyond the Margins: Building Trust in Policing with Young People*. Institute for Conflict Research.

¹⁹ Byrne et al (2005). *Young People's Attitudes and Experiences of Policing, Violence and Community Safety in North Belfast*. Institute for Conflict Research.

²⁰ Lloyd, T. (2009). *Stuck in the Middle*. University of Ulster and Youth Action NI.

However, there are some real signs for optimism. According to the survey mentioned above, the proportion of young people reporting unacceptable police behaviour has declined from 58% in 2003 to 38% in 2010, and there have been improvements in all eleven forms of contact with the police covered by the survey.²¹

We know from our own consultations that some young people speak highly of the police and recount positive experiences. We have been impressed with how articulate young people can be in expressing their views about the police and how much support they show for the police even when critical of the treatment they sometimes receive. We found in particular that the vast majority of the young people wanted the police to be the primary agency to which they would turn if they were a victim or if they were a witness to a crime. Even the most serious and prolific offenders respected the police's right to question, arrest and prosecute them through the courts. We think that amongst young people, the legitimacy of the police is not in question.

We are confident that with the right training, appropriate protocols and safeguards coupled with inspectorate oversight and prioritisation at the most senior level, the quality of local policing in general and relationships with young people in particular could improve further. In our view, the police could learn from young people by listening more to them and prioritising their concerns. They could also learn from some of the detached and outreach youth workers we met who were doing some excellent work in some of the most difficult communities. This, in our view, would enhance individual police officer's authority, not undermine it as many seem to fear.

To this end, we commend the PSNI for recently revising its policy on the policing of children²². In applying the standards of the UNCRC, it requires all police officers to respect the human rights of young people. We also commend the NIPB's Youth Strategy and the introduction of the Youth Consultation scheme, whereby young people meet trainee officers to discuss issues relating to interactions between them. But in our view these are not sufficient to change the attitudes and behaviour of police officers on the ground.

3.4.3 Changing perceptions and improving behaviour

Overall, public confidence in local policing is still relatively low. Data from the 2009/10 Northern Ireland Crime Survey shows that 40% of respondents say they think the police do an excellent or good job, which compares with 56% in England and Wales. Almost twice as many respondents in NI rated the performance of their local police as poor or very poor compared with England and Wales. Furthermore, just over half (51%) of the public in England and Wales think the local police

21 Nelson et al (2010). *Beyond the Margins: Building Trust in Policing with Young People*. Institute for Conflict Research.

22 PSNI Policing with Children and Young People policy directive PD 13-06, revised 2010.

deal with the issues that matter compared with just over a third (37%) in Northern Ireland. The police still have much to do in local communities, particularly where a legacy of distrust remains.

Where police officers have had training in working with young people²³ and where, at a local level, Area Commanders have taken pro-active steps to engage with young people and prioritise their needs, some progress has been made. Similarly, the police have shown from the work they have done with very specific groups of young people that they can make the necessary changes. Many of the young gay and lesbian people we spoke to rated the police highly and fully trusted them to protect them from homophobic attacks.

3.4.4 Exercising discretion

In principle, for low level offending, we would like to see the police exercise more discretion than they do at present, but greater attention needs to be paid to how they exercise it. We therefore welcome, again in principle, the recent initiative on the expansion of discretion by the police which we now understand has been rolled out across Northern Ireland. However, some of the people we spoke to, most notably police liaison groups and some groups that represent young people, expressed concern about this development. They questioned whether these additional powers will be used constructively and effectively. We believe that the powers can be used constructively, but this confidence is conditional on the police continuing to improve the behaviour of all police officers in their dealings with young people and situating greater discretion within a framework of human rights and an agreed code of conduct.

3.4.5 Prioritisation from the top

Most importantly, there must be a tangible signal from the top that improving police relationships with young people is a real priority. The absence of children and young people in the Board's recently published Policing Plan²⁴ is a serious concern.

This lack of prioritisation is compounded by the Police Ombudsman's practice of not routinely encouraging, facilitating, collating or reporting on complaints by young people under the age of 16. (The very existence of the Police Ombudsman's Office and associated legislation prevents the police from taking responsibility in addressing issues raised locally by young people). Young people have either never heard of the Police Ombudsman or are reluctant to lodge an official complaint or don't know how to.²⁵ We feel that the Police Ombudsman needs to encourage young people to voice their concerns and for these to be properly recorded and fed back to the police.

²³ See in particular a project developed by Include Youth in North Belfast called "Young Voices".

²⁴ *The NI Policing Board and the Police Service of NI Policing Plan 2011-2012.*

²⁵ Nelson et al (2010). *Beyond the Margins: Building Trust in Policing with Young People*: Institute for Conflict Research.

In the future there may be more scope for police officers to deal with complaints locally (a simple apology would suffice in many cases), but this can only be a credible option once children have sufficient confidence to complain about their treatment and the police have put credible measures in place to receive, listen to, learn from and act constructively in response to complaints made against them. Local arrangements, providing they do not obstruct young people from making complaints direct to the Police Ombudsman where necessary, would provide the police with important information that could help to improve the quality of the service they deliver.

3.4.6 Concluding remarks

Young people want the police to 'police' their neighbourhoods and to protect them. We found, without exception, that the existence of paramilitaries was both feared and hated by young people. Even the most serious young offenders, who were themselves capable of engaging in serious violence or damage, blamed them for much of the misery in their lives. Young people tried to resist the paramilitaries' attempts to control them and despised their hypocrisy - encouraging drug use while simultaneously punishing them for it. They particularly wanted to be protected from the pressures that were placed upon them to 'join up'. In our view, the only way of achieving this is to undermine the credibility of alternative (illegal) sources of law enforcement. This will require visible, accessible and legitimate community policing alongside a fair, efficient and effective criminal justice system.

We therefore recommend that:

4. *Police should build on the progress made since the Patten report by:*

- a. raising the priority of children and young people in their planning processes at strategic and local levels;***
- b. modelling best practice in interacting with young people to increase trust and minimise offending;***
- c. developing an appropriate skills package for all officers on engaging with children and young people;***
- d. removing legal obstacles to developing robust and locally-based complaints procedures to help young people raise concerns and using this as a learning tool, while maintaining the right of unimpeded access to the Police Ombudsman.***

3.5 Diversion and prosecution

In the last section we drew attention to the important role that police discretion can perform in responding to low level offending. But one of the main risks of giving the police greater discretion is that more children who commit low level offences will be brought into the system rather than diverted from it. It is important therefore to examine the wider practices in place for diverting children from the youth justice system and in particular the role of the PPS – and to a lesser extent the police.

3.5.1 The principle of proportionality

The principle of proportionality – that the level of intervention should be proportionate to the seriousness of the offence, the harm it has caused and the culpability of the offender - is deeply enshrined in all criminal justice systems. The more serious the offence, the more important it is to put the right safeguards in place to see that justice is done. This is what the courts are there to ensure. Minor crimes, either because they cause little harm or because the offenders are deemed less culpable, are considered best dealt with outside the system.

Diverting young offenders from prosecution is now commonplace. In the Netherlands, for example, public prosecutors divert the majority of young offenders from court proceedings to a community based reparation project called HALT. The system works well; about 60% either commit less crime or cease offending altogether. In Sweden, public prosecutors can either waive prosecution, impose a fine or a conditional caution and courts now have 40% of their workload diverted. In Scotland, the presumption against formal measures applies when a child is under 16 and the Procurator Fiscal can employ a wide range of disposals, from fines, warning letters and conditional penalties to social work and restorative justice for those over 16. Here too some 40% of cases are diverted from formal proceedings.²⁶

There is no doubt that diverting minor offences from formal proceedings frees up court and youth justice professionals' time to focus on more serious and more persistent offending.²⁷ The immediate attractions of this in times of economic austerity are self-evident. In Northern Ireland, the benefits may be even greater, given the extensive delay that pervades the whole of the criminal justice process. We address the issue of delay later, but it is important to emphasise here that without diverting a considerable proportion of cases from formal court proceedings, we cannot see how sufficient resources can be released for tackling this endemic and damaging problem.

²⁶ Morgan, R. (2008). *Summary Justice: Fast – but Fair?* Centre for Criminal Justice Studies.

²⁷ This is endorsed by the Council of Europe's Committee of Ministers in their Recommendation concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (2003).

Young people tend to commit relatively minor offences and are generally considered to be less culpable than adults. This is recognised in international standards, such as the article 40 of the UNCRC, which states that children should be “*dealt with in a manner...proportionate both to their circumstances and the offence.*” Furthermore, there is sound research evidence to show that drawing young people into the criminal justice system risks further offending and slows desistance²⁸. Labelling young people as offenders during a period when their identity is still developing carries the risk of them conforming to that label, while trusting them to behave better in future can have a powerful positive impact.

3.5.2 Diversion in NI

The police in NI have a number of responses to offending in their armoury. They can take no further action, perhaps having had a discussion with the young person or with their parents, leaving them to deal with the matter; they can formally caution or warn the young person; and they can engage the victim in a restorative approach whereby, if the offender makes appropriate amends, the police officer will not take the matter further. Although the police implement all these measures they can only do so if sanctioned by the Public Prosecution Service (PPS).

Public prosecutors commonly act as gatekeepers to the formal system, determining whether or not an offence should be prosecuted in a court or can be dealt with by other means. In Northern Ireland, the PPS follows youth-specific guidelines²⁹ (which are currently being revised), and have appointed their own youth specialists. There are systems in place to ensure a degree of consistency and their decisions are subject to internal as well as external scrutiny.

In 2010 (the latest year for which data is available) of the 9,400 decisions made by the PPS, about 35% were to prosecute, 28% were referred back to the police for a caution or informal warning and 7% were referred for a ‘diversionary’ youth conference. However, in almost a third of all the cases on which the PPS made a decision, the decision was ‘No Prosecution’. In these cases either the evidence to take further action was insufficient or to do so was not in the public interest. We have not been able to investigate this issue in any depth but would suggest that, if only for the purposes of improving efficiency, the large proportion of No Prosecution cases should be looked into.

28 McAra, L. and McVie, S. (2007). *Youth Justice? The Impact of Agency Contact on Desistance from Offending*. European Journal of Criminology. 4:3, pp315-45.

29 Public Prosecution Service NI (November 2008). *Guidelines for Diversion*.

Recently the PPS, working in collaboration with the police, have made changes to practice that should reduce the numbers going through the courts (and hence reduce the problem of delay). The PPS will give a swift decision on cautioning by telephone while a young person is in the police station being questioned rather than requiring the police to file a report for a decision to be taken at a later date. As mentioned in the last section, the police, with PPS support, have reintroduced 'Discretion', which enables them to mediate between the offender and the victim and seek to put matters right rather than to process the offence further. Its introduction has been accompanied by guidance and clear parameters to its use. It is being overseen by the PPS to ensure consistency and it seems as if it is being used appropriately. Last year, nearly 10% of youth cases were dealt with in this way whereas so far this year the percentage is 14% as confidence in the system grows.

3.5.3 Reinforcing parental responsibility

While technically the police retain the power to 'take no further action' (with or without advice to parents), this rarely if ever happens in practice and instead they process everything as a crime. We think this is unhelpful.

In the first instance, it should be assumed that parents (or guardians) will deal with most minor offending as one requiring parental discipline rather than criminal justice involvement, at least while the child is still of school age and assumed to be under parental supervision. Almost everyone we spoke to felt that the first line of defence in responding to children's misbehaviour must be the child's parents or guardians. From criminal justice professionals and the police to parents themselves, there was unanimity in this respect. They thought parents should be given the opportunity to carry out their responsibility by exercising effective discipline and putting matters right between the victim and the child.

"I want the authority to deal with it in my own way"

"I want to help the child understand the consequences of their actions"

"I want to get him by the scruff of the neck up to the victim"

"I want him to repair the person's window or property".

Even parents deemed unable or unwilling to exercise their responsibilities should be given the chance to do so, at least in the first instance, and be helped to do so if necessary. Some people we consulted even felt that parenting responsibilities were being undermined by the criminal justice system taking over matters which used to be dealt with by families or neighbours - *"the police should be bringing out the parents to see what they (the children) are doing and get **them** to take them home"*. The police were also keen to see greater parental responsibility and felt there were too many unrealistic expectations placed on them and other criminal justice agencies.

3.5.4 Corporate parents

The police and others were also concerned about the high number of call outs from children's homes for behaviour that parents would normally be expected to deal with. Where offences occur in children's homes or on school or other youth premises, the institution should be able to deal with the behaviour as a disciplinary matter rather than referring it on to the police to deal with. Some children's homes are already doing this, utilising restorative approaches to resolve behavioural problems, which we fully commend. Full Service Schools³⁰ operating in socially disadvantaged areas in Belfast are also able to prevent and deal with a range of behaviour that other schools sometimes struggle with. We would like to see this principle of self-reliance in dealing with routine, low level anti-social and even criminal behaviour become the norm where the state is acting in *loco parentis*.

3.5.5 The best interests of the child

Except for persistent or serious offenders, we did not find victims or communities were asking for more punitive approaches to young people. On the contrary, we found that many people thought young people were wrongly maligned and that the criminal justice system intervened too prematurely, too slowly and in some cases too harshly. However they also wanted to know that something was being done and that those children who were clearly heading in the wrong direction would receive the sort of input that would make a difference. There was a common view that young people 'make mistakes' and that some offending is a normal part of growing up. However, victims and communities want young people to learn from those mistakes and there is a limit to their tolerance.

There is considerable frustration with the perceived failure of the system to tackle more persistent or serious offending or to address the needs of children who were 'going off the rails'. Offences such as household burglaries and taking of cars have a high impact but a low detection rate and there is local anger that those thought to be culpable are still 'running around on the streets' and continuing to offend. Local communities want swift, certain and effective action in the best interests of all parties - parents, victims, offenders and local residents. Quick action by the police on low level offending accompanied by the payment of compensation or some reparation, coupled with a stronger criminal justice system response to more serious offending would do much to increase community confidence.

30 FGS McClure Watters (2008). *Evaluation of Full Service School Project*: Department of Education.

In other jurisdictions, prosecution decisions in relation to children are based not only on public interest and evidential matters, but also explicitly take account of the best interests of the child through direct reference to Article 3 of the UN Convention on the Rights of the Child. We note from the Prosecution Code in Northern Ireland³¹ that this additional test in relation to children is absent. Although the guidance for prosecutors permits referring a child to a youth conference if a court appearance is likely to result in considerable delay, we are unaware of any occasion on which this criterion has been used and we understand that it may be removed from the guidance during its current revision. This must be of particular concern not only for offenders but also for child victims who currently wait an inordinately long time for matters to be resolved.

As already noted, the best interests of the child are often better served outside the criminal justice system and in their families. However some parents are as much part of the problem as the solution. Poor parental discipline, neglect and abuse are all powerful predictors of offending behaviour and children whose parents are themselves offenders, are addicted to drugs or alcohol, or have mental health problems are much more at risk of engaging in offending than other children. Schools too, by failing in their responsibility to look after and control the pupils in their care, increase the risk that they will end up in the criminal justice system. Where families and schools fail, the criminal justice system is often seen as the next resort but in our view, where there are serious welfare issues that need to be addressed, the criminal justice system shouldn't be used as a way to access them unless the offending is serious or persistent.

3.5.6 Triage

In response to concerns in England and Wales that too many children were entering the youth justice system, the Youth Justice Board introduced triage at the point of arrest. Taken from the medical model, triage involves the rapid assessment of a young person arrested for a minor offence for the first time by a multi-agency team. This assessment provides the police and the Crown Prosecution Service with better information on which to base their decision on how the young person should be dealt with. The intention is to divert the young person to, for example, family support or restorative interventions or, where the offending is serious or persistent, to fast track them to court.

Triage provides a direct link to accessing preventive services, such as drug treatment or adolescent mental health services, and has resulted in significant reductions in first time entrants into the criminal justice system and, where restorative interventions are initiated, greater victim satisfaction. In Northern Ireland, we came across an initiative which provided some aspects of triage: Child Intervention Panels (CIPs).

³¹ Public Prosecution Service NI (2008). *Code for Prosecutors including a Code of Ethics*.

CIPs, which were introduced on a pilot basis a year ago, comprise a multi-agency panel to which children whose behaviour is of concern can be referred for discussion and action. A child need not have come to the attention of the police to be referred to the CIP, although the majority of referrals were made via this route. At the time of writing, the pilot CIP had been suspended due to technicalities around the employment of administrative staff. In our view this is disappointing, as participating agencies found the pilot very beneficial, particularly the comprehensive information-sharing facility. As described above, this multi-agency method of working has been found to work well elsewhere. It enables help, where it is needed, to be provided for children promptly and by the most appropriate agency. The sharing of information reduces duplication and ensures children do not fall through the net. Universal and voluntary services can do all that a criminal justice agency can do to prevent future offending without drawing the child into the criminal justice system.

3.5.7 Community Based Restorative Justice

Another way of promoting greater responsibility for low level offending by children and young people outside the criminal justice system is offered by Community Based Restorative Justice (CBRJ). Arising out of concerns about young people being violently punished for their behaviour by paramilitaries, CBRJ schemes evolved in order to mediate between the paramilitaries and young people involved in crime and anti-social behaviour. CBRJ is designed to reduce offending behaviour and secure the re-integration of young offenders back into their communities. In addition to working directly with individual offenders and their families, these schemes offer youth services to those most at risk of offending and provide 'drop in centres', activities and access to education, training and other community based services. They also spend time on the streets attempting to connect with young people, providing an alternative to 'hanging about on street corners'.

CBRJ organisations combine the principles of effective restorative and youth work practice. They address offending behaviour and provide parenting advice and support; engage with young people, listen to their concerns and seek ways to alleviate them; behave respectfully and politely towards young people; and firmly challenge anti-social and criminal behaviour. CBRJ is a good example of how such behaviour can be dealt with outside the criminal justice system by meeting the interests of offenders, victims and local communities. It reflects one of the core requirements of the Good Friday Agreement – to create a bridge between local communities and the state.

In Northern Ireland, these organisations tread a difficult line. They are trusted by communities, young people and public agencies, but only to a degree. Young people are sometimes concerned that information is passed to the police or the paramilitaries. Some of the public agencies worry that they are too closely linked to the paramilitaries. To enjoy the confidence of every group is

perhaps an expectation too far but they are an important and effective part of the youth justice landscape and in our view one that deserves to be nurtured.

Following the political settlement around policing and the development of more formal criminal justice measures to deal with offending, the role of CBRJ and similar grass-roots restorative justice organisations has shifted. They are still involved with young people offending or at risk of offending and work to restorative justice principles, but their use of restorative conferencing has diminished considerably. This is largely due to the introduction of a Protocol in 2007 whereby CBRJ organisations are required to inform the police of any offence referred to them. The police, after an investigation, then determine whether or not to refer the matter on to the PPS who then decide whether the organisation should proceed.

The number of referrals for community based restorative processes has fallen dramatically since the Protocol was introduced. Families are unlikely to seek help for their child's offending if in so doing a court appearance, conviction and criminal record might result.

Consolidating the rule of law is vitally important in any society undergoing transition. But if this can be achieved outside the criminal justice system for most youth offending – and we believe it can – then there should be a place for schemes like CBRJ, if only because they underline and reinforce the notion that communities should take some responsibility for addressing the behaviour of their own children. We understand the concern about community involvement in the delivery of justice when it is these same communities that were traditionally in defiance of the state and questioned its legitimacy. But we also understand that the standards of behaviour and accountability required of CBRJ organisations is high and that the CJINI is more than satisfied with how these schemes are operating³². Both Community Restorative Justice Ireland and Northern Ireland Alternatives have been accredited, so they can now work in partnership with the government, the police and other criminal justice agencies, but in our view the current approach is not making sufficient use of a valuable community initiative.

We are heartened by a recent, very positive, inspection of Community Restorative Justice Northern Ireland (CRJI – a provider of CBRJ services)³³. It noted that the number of cases dealt with under the Protocol had fallen far short of expectations and suggested this might be a result of the community's increased confidence in the statutory services (particularly the police). The inspectors expressed their agreement with the view of PSNI and the Department of Justice that the Protocol should be reviewed in the light of experience. They also noted with approval the establishment of pilot schemes to facilitate greater involvement of CBRJ schemes in delivering restorative interventions in youth cases, with the agreement of all parties, including the PPS.

³² See, for example CJINI (2008) *Community Restorative Justice Ireland: report of an inspection*.

³³ CJINI (2011). *Community Restorative Justice Ireland: A follow-up review of the Community Restorative Justice Ireland community restorative justice schemes*.

3.5.8 Diversion from court

Rather than attend court, the PPS can divert a young person to a youth conference. This is the subject of the next section, but we draw attention here to the referral process itself as there are a number of problems regarding how this operates. Currently, the PPS write to the child/child's guardian and invite them to admit the offence and to participate in a youth conference. The letter does not explain the implications of admitting the offence and agreeing to a conference. A high proportion of young people do not respond to this letter – understanding it requires a high degree of literacy and familiarity with legal jargon - and many only agree to a PPS ordered conference after the matter has gone to court. Arguably when young people do respond, they are not doing so with full information, understanding or informed consent. Article 12 of the UN Convention on the Rights of the Child and other international standards³⁴ reinforce the importance of these matters in relation to children. About 40% of cases are withdrawn at court and, it is believed, the bulk of these cases are where young people have not responded to the PPS. On reaching court, the case is referred back for a 'diversionary' youth conference or, more rarely, a caution. We have been informed by the PPS that they are aware of this problem and are actively seeking improvements to the paperwork and the process, so we are confident the situation will improve.

3.5.9 Defence lawyers

Defence lawyers must also bear some responsibility for young people's lack of comprehension and engagement. Most are not youth specialists and we have been told that some seem content for matters to reach court even when this is not in their client's best interest, resulting in late "guilty" pleas that prolong the proceedings and clog up the courts. It would be better if lawyers were more pro-active in advising young people about their options much earlier in the process. However, the youth justice system may need to be adapted to enable this to happen. For example, solicitors described to us some of the barriers to their early and effective involvement. They believed young people should receive more encouragement to obtain legal advice while they were at a police station. Solicitors might not be aware of an impending case until late in the day, nor are they routinely copied in to correspondence about possible diversions offered by the PPS. Solicitors also felt it should be possible for them to have access to the information held by the police about a child's past (with the child's permission) to enable them to give appropriate advice.

³⁴ The need for informed consent is emphasised by the UN Economic and Social Council's Basic Principles on the use of Restorative Justice in Criminal Matters (2009) as well as the Council of Europe's Guidelines on Child-Friendly Justice (2010).

3.5.10 Concluding remarks

We think that, even under the current system, many more young people would be dealt with much more quickly, and through non-court disposals, or would have decisions not to proceed made much earlier if the PPS guidance required them to have the 'best interests of the child' (victims as well as offenders) as a primary consideration in their decision making. We also think that solicitors would be less likely to encourage their child clients to prolong the process of having matters disposed of if they were more cognisant of a child's best interests.

We therefore recommend that:

- 5. To comply with the new principal aim of the youth justice system (see Recommendation 28), the PPS should incorporate Article 3 of the UN Convention on the Rights of the Child into their Code of Practice forthwith. Further, all professionals working in the youth justice system, including defence solicitors, should receive appropriate training to reflect the new aim.***

Reducing reliance on the courts to deal with more minor offending, as we have outlined here, must be viewed as part of a more strategic approach that ensures they focus on offending that causes the most harm and releases resources for reducing delay. The court system should be a system of 'last resort' for serious or persistent offending, where compulsion is required (perhaps because of failure to comply with previous youth conference plans) or where a young person denies the offence. That, in our view, is what the criminal justice system is principally there to do.

We therefore recommend that:

- 6. The aims of the youth justice system should reflect the principle of proportionality and include a presumption that low level offending should be dealt with by parents (with support where necessary), school and communities or through a police disposal. This will require:***
 - a. the introduction of triage (or similar) at the point of arrest;***
 - b. building on the successful practices of community based restorative justice schemes;***
 - c. the extension of police discretion while ensuring adequate safeguards;***
 - d. greater use of police warnings and cautions for offences that would otherwise have been dealt with through more formal channels.***

7. To improve efficiency and reduce delay, we also recommend:

- a. examining the high proportion of 'No Prosecution' cases with a view to removing them from the formal system at an earlier stage;**
- b. monitoring the impact of the PPS initiative to process diversionary disposals more speedily;**
- c. improving PPS written communications with children and their parents.**

3.6 Bail and remand

The circumstances under which people can be deprived of their liberty are carefully prescribed in both international and domestic law. According to the European Court of Human Rights, a person charged with an offence should always be released pending trial unless there are relevant and sufficient reasons for justifying detention, and Article 5 of the European Convention on Human Rights states that everyone has the right to liberty and security of the person. In practice, decisions concerning the detention of a suspect pending trial require the careful balancing of the conflicting principles of liberty, justice and public protection. With regard to children, their welfare is a further consideration. Furthermore, signatories to the UNCRC are bound by a number of principles, including that custody should only be used as a last resort and for the shortest appropriate period of time and that a young person deprived of his/her liberty shall be detained separately from adults unless it is in the best interests of the child not to be so. The Council of Europe has also advised that juveniles should not be remanded in custody for an offence for which, if found guilty, they could not receive a custodial sentence. In line with these standards, we reinforce the principle that remand in custody should only be used as a last resort and specifically not in those cases where, if found guilty, the young person cannot be committed to custody.

The Northern Ireland Law Commission is currently undertaking a detailed review of the law on bail in criminal proceedings. We have had a number of useful discussions with them and share many of the views that have been expressed in response to their consultation paper³⁵. We are confident that they will address these issues effectively but we think it is important to underline here a number of key issues relating specifically to young offenders (the Law Commission's work covers all ages).

³⁵ Northern Ireland Law Commission (2010). Consultation Paper: Bail in Criminal Proceedings NILC7.

3.6.1 The Police and Criminal Evidence Act (PACE)

Under the Police and Criminal Evidence Act 1984³⁶, commonly referred to as 'PACE', the police can authorise the holding of a young person in a 'place of safety'. The main reason why a young person might need a place of safety is lack of a place to return to following the offence. Police stations are largely considered to be unsuited to the task, so most young people who are deemed to require a place of safety are transferred to Woodlands Juvenile Justice Centre, which is designated as a place of safety under the legislation.

Admissions under PACE now represent the route by which most young people enter Woodlands and this rate is increasing. In 2010/11 PACE admissions constituted 62% of initial admissions to Woodlands compared to just 47% in 2006/07. In part, this increase reflects the change in legislation which brought 17 year olds within the scope of the PACE procedures for juveniles in 2009, but that does not explain its significant increase as a percentage of overall admissions.

Admissions under PACE also tend to peak significantly at weekends, with as many as 11 children being admitted over the 2 day period. Inevitably, this short-term swelling of the population has a significant impact on the operation of the Centre.

About half of those who are detained on PACE are released at court within a day or two of their first appearance. This begs the question why it was considered necessary to allow these children to cross the important threshold of entering custody in the first place. We appreciate that the police may well be acting, as they see it, in the child's best interests, particularly if the alternative is to be held in police cells, but that does not mean that the JJC is the right place for many of these young people.

To assist the Review Team, the DHSSPS and the DoJ undertook a review of looked after young people in custody during May 2011. They compared the numbers in custody on a Thursday to those on a Monday and found that of the 6 children admitted under PACE over the weekend, 4 were looked after. The question of how children, already under the protection of the state, can be in need of a place of safety remains unanswered.

We know from our discussions with the DHSSPS and the police that they are very much aware of the issue, and are considering how best to improve things. We also acknowledge that the present arrangements place the police in a very difficult position: on the one hand current legislation limits the amount of time they can hold a child before they are required to find a place of safety, and on the other, save for Woodlands, there are very few other accommodation options available to them.

³⁶ The Police and Criminal Evidence Act 1984 was followed by legislation in Northern Ireland - the Police and Criminal Evidence (Northern Ireland) Order - in 1989.

We therefore recommend:

8. ***The development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice, to reduce to an absolute minimum the use of Woodlands as a place of safety under PACE.***

3.6.2 The use of remand³⁷

Typically, in any one day, around three-quarters of the juvenile custody population is on remand, many of whom come directly from residential care. Most are neither serious nor persistent offenders³⁸ and most do not go on to serve a custodial sentence. This proportion of remands is significantly higher than that in adult establishments, which themselves have been criticised for the levels of remand by the Prison Review Team³⁹. It is also significantly higher than in other comparable countries. In England and Wales, for example, about a quarter of the juvenile custodial population is on remand.

Table 3: Outcomes of remand decisions, 2005-2009

Outcome	Number	Percentage
Bailed	917	80%
Sentenced to JJC	100	7%
Released by the Court	70	6%
Remanded to Prison/YOC	44	4%
Charges Dropped	11	<1%
Sentenced to Prison/YOC	7	<1%
Sentenced on other charges	4	<1%
Total	1153	100%

Source: Youth Justice Agency

Notes: (1) Final disposal outcome information is not held on YJA databases. The information shows the movement information following the remand;

(2) Released by Court means that the young person was not returned to the JJC from Court and can include a number of different outcomes e.g. non-custodial disposal, released on time served.

³⁷ The data on bail and remand seems to be patchy, particularly on the offences of those young people appearing at court, the reasons for bail and remand decisions, the conditions under which bail is granted and the circumstances relating to breach. As a consequence, we have had to rely primarily on anecdotal evidence and personal testimony but what we heard and found appears to corroborate similar anecdotal evidence from other sources (particularly the Law Commission's review).

³⁸ CJINI (2008). *Inspection of Woodlands Juvenile Justice Centre*.

³⁹ *Review of the Northern Ireland Prison Service*, Interim Report (Feb 2011): http://www.dojni.gov.uk/review_of_the_northern_ireland_prison_service_-_interim_report

As can be seen from Table 3, very few – less than 1 in 10 – of those young people remanded to the JJC subsequently receive a custodial sentence; most – 4 out of 5 – are subsequently bailed. The table also shows that the JJC is being used primarily as a remand centre rather than for what it was mainly intended, which was to hold young people sentenced to custody. If this is correct, then this practice would constitute not only a breach of international standards on pre-trial detention, but also represent a misuse of a very expensive custody provision; the approximate cost of holding a child in the JJC is around £4,000 per week. The criteria for remand stipulate that there must be relevant and sufficient grounds to justify detention based on the risk that the accused will: (i) fail to appear for trial; (ii) interfere with the course of justice (for example witnesses); or (iii) is likely to re-offend. The courts may, in addition, remand a suspect to custody for the preservation of public order. Table 3 suggests that the courts are using custodial remands wrongly – as a kind of ‘short, sharp, shock’ or more benignly to secure the young person’s safety – rather than for the purposes for which remand is intended.

While we do not have conclusive evidence to suggest that the remand process is being used systematically as a punishment, we do wish to underline that it should never be used pre-emptively in this way.⁴⁰

An alternative and possibly more plausible explanation is that it reflects a serious gap in the provision of suitable bail packages to the court at an early stage that would ensure that young defendants can be safely and securely bailed to reside in the community. Whatever the reason, further work needs to be undertaken to establish whether the right young people are being held on remand in custody and if not, what needs to be done to put this right. We suspect that the results of this exercise will include the need for more realistic bail conditions with better support and supervision.

3.6.3 Applying conditions

*Bail conditions are: “like putting a big, red button on the wall and saying ‘Do not touch.’”
(A young person in custody)*

It is widely accepted that young people who offend should be treated differently to adults. Nowhere is this truer than in applying bail conditions. The automatic presumption of bail is enshrined in law⁴¹ and international convention⁴² and we believe that, in the main, bail should be granted to young offenders **without conditions**. By applying the same criteria as for adults, young offenders are at risk of being set up to fail, particularly as their lives are often already chaotic and unsettled.

⁴⁰ See Article 37(b) of the UNCRC. Both the UN Committee on the Rights of the Child (2007) and the Council of Europe (2003) condemn the use of pre-trial detention as a form of punishment as being a violation of the presumption of innocence.

⁴¹ See Article 12, CJ (Children)(NI) Order 1998, which states that there is a presumption of bail in all youth cases unless specific factors apply relating to the nature of the offence.

⁴² The International Covenant on Civil and Political Rights (1966).

Where conditions do need to be attached to ensure the child can be kept out of custody and held in the community, the court needs certain assurances, including an assurance that he/she will not commit further offences. We were however concerned to learn that bail conditions are not always proportional or even relevant to the risk of further offending, for example a night time curfew applied in a case for shoplifting after school, or a general condition that a child should not break any of the rules in a Children's Home.

Although young people must agree to the conditions, they do not do so in an informed way. Often children will agree to any condition for fear that the alternative will be a custodial remand. They also make little or no contribution to the setting of appropriate conditions and rarely consider their capacity to adhere to them. Solicitors are not intervening on their behalf either. Our interviews with young people in prison indicated that they were acutely aware of how irrelevant or impossible to keep the bail conditions were and did not respect them. Perhaps not surprisingly, their record of keeping to bail conditions is poor.

People have described to us a 'revolving door' syndrome which involves children being remanded to custody, then bailed, only to breach bail and be subsequently remanded again, often for the same offence. So, for example, in 2007/08, 134 individual young people were held on remand 261 times. In 2009/10, the proportion was similar with 116 individual young people held on remand 238 times throughout the course of that year.

Compliance with bail conditions is compromised by the length of time young people are subject to bail (see later section on delay). From arrest or questioning to disposal could be as much as one or even two years, an inordinately long time for a child to adhere to any conditions or even remember what they are. The number of court adjournments relating to their case must, of itself, lead to confusion.

We have also been told that in some instances bail conditions are set at such a high level that breach is almost inevitable, particularly given the length of time involved. This applies particularly to looked after young people in residential care. About a third of children remanded to the JJC are looked after, most of whom come directly from children's homes. Research suggests that sometimes looked after children are being remanded to the JJC who do not strictly fit the remand criteria. And often their offences will be trivial, such as kicking a door frame, stealing food from a fridge or throwing a snowball at a member of staff. Children's homes do not know if they are to report to the court every breach of every rule or only those that relate to the offence for which they received bail.

All this runs the risk of undermining confidence in the remand and bail arrangements. In our view, therefore, bail without conditions should be the default position for children. In those cases where there is a need to impose conditions, District Judges as the key decision makers need to strike the right balance between protecting the public and imposing conditions that are relevant, proportionate and in the best interests of the child. Informal dialogue between the YJA, the police, the PPS and the court prior to any formal applications for bail may help judges reach the right decision.

It is important that judges and the community can have confidence in the support arrangements available for those who are released on bail. A good bail support scheme is operated by the Youth Justice Agency, but it is available too late in the process, with provision for assessment commencing **after** a young person is remanded in custody. We think bail assessments should be made available to the court at first appearance where a remand in custody is otherwise likely.

3.6.4 Accommodation

Ideally, children on bail should remain at home with their families. Parents, either with or without the assistance of any support and supervision services, should exercise their responsibility to help ensure their child understands what it means to be on bail and that they adhere to any conditions. Where a child cannot be accommodated in his/her own home – and this seems to be not uncommon – they should either be accommodated with another member of their family or be provided with suitable supported accommodation.

In some cases, parents may refuse to have a child home, hoping a short spell in custody will be a 'wake-up call' or because they simply feel the young person is beyond their control and they can no longer cope with their behaviour. Neither of these provides the court with a justification for remanding the child in custody (see criteria above). Sometimes a young person is already homeless at the time of the offence but on occasions the offence, or the young person's behaviour at the time of the offence, may lead to them becoming homeless. In respect of looked after children, who are disproportionately likely to be remanded in custody, we were informed that a number of care homes refuse (if only for a short time) to have young people back if they have offended against the home or a member of its staff, or where they are considered unruly. Again, these are not sufficient grounds for remanding a child to custody.

In many cases, the provision of support to families with a troublesome youngster may mean the family can continue to care for them. In others, Social Services should be called upon to respond to their statutory duty to provide accommodation, particularly for the young homeless. The NI

Housing Executive also has a statutory responsibility to help children aged 16 and over who present as homeless.

We understand, and indeed sympathise, with the difficulty of providing suitable and appropriate accommodation for this group of young people. We therefore also understand why there is a lack of available accommodation in Northern Ireland and that as a result there may not be anywhere suitable to place the child. Nevertheless, it seems to us that emergency provision for housing young people is urgently needed, and more needs to be done to ensure that this responsibility is met.

In this regard, we were privileged to observe the operation of the Strand Foyer Accommodation Project in Londonderry. The Foyer provides an excellent combination of self-contained accommodation for independent living together with a range of support services and activities. We understand that a similar Foyer operates in Belfast, but time constraints did not allow us to visit. While these projects may not be suitable for all young people who are homeless, particularly those under the age of 16, the residents we met told us that the project had provided them with a safe base and a protective environment at a critical time in their lives.

3.6.5 Moving forward

Given that difficult decisions have to be made on issues around bail and remand, appropriate and effective arrangements need to be in place. We recognise that the development and provision of such arrangements is not straightforward and will have resource implications, but we know from examples across the rest of the UK that it is perfectly achievable.

We therefore recommend:

9. *Strict adherence to the statutory presumption of bail supported by:*

- a. the provision by the Youth Justice Agency of bail information, support and supervision at the first court appearance, with co-operation from the police and the Public Prosecution Service, where there is a serious risk of a custodial remand;***
- b. the application of relevant, proportionate and realistic bail conditions, but only where necessary;***
- c. the participation of young people and their parents in the setting of any bail conditions such that they understand and fully accept their implications;***
- d. the availability of an appropriate mix of suitable accommodation.***

3.7 Youth conferencing

“Volunteer work, written apology, drug and alcohol work, victim awareness, I done well though you know” (young person who had completed a youth conference plan).

One of the most positive developments to have arisen out of Northern Ireland’s recent history is the expansion of rich and varied restorative practices. Restorative approaches have been introduced to respond to offending and anti-social behaviour, family disputes, disruptive behaviour in schools and children’s homes and in helping prisoners reintegrate back into their communities. Early teething problems have been largely overcome and professional practice in restorative justice in Northern Ireland is now internationally recognised.

Restorative justice challenges some of our assumptions about criminal justice. It allows offenders to play an active rather than a passive role and gives victims a voice. It concerns itself not just with violations of the law but also with repairing the harm that has been caused. And in a post-conflict society it can play an essential part in rebuilding the legitimacy of the criminal justice system.

We have been told about and observed ourselves restorative practices in NI which offer an inclusive, problem-solving and forward looking response to offending and are well embedded at statutory and community levels. Perhaps because of Northern Ireland’s difficult past, we felt there was a common understanding of the power and efficacy of using this approach in addressing the needs of young offenders and victims alike.

Aside from police-led diversionary disposals, youth conferencing is the means through which most young people’s offending is dealt with either by way of a diversionary youth conference directed by the PPS for less serious offences or by way of a court ordered conference. Approximately 1,800 referrals (which amount to about 15% of all young offenders) are made to youth conferences every year, of which about half are PPS referrals. Most referrals (over 80%) are male and over half are aged 16 or 17.

The process of youth conferencing is conducted in such a way as to maximise the chances of young people putting offending behind them. Conferences are led by skilled facilitators who communicate well with young people, their parents, victims and representative members of the wider community. There is considerable preparation prior to the conference to enable the full participation of all those attending. Young offenders talk about the crime they have committed and why they did it, which for some represents a real and difficult challenge. They are encouraged to confront the impact their behaviour has had on the victim and/or wider community and explore how to put matters right.

Most youth conference plans involve some sort of apology to the victim, perhaps accompanied by the payment of compensation or 'paying back' through unpaid work to the victim or a community organisation. There is usually a community service component and a programme to address any underlying concerns that are relevant to the young person's offending, such as attending an alcohol awareness course. The Youth Justice Agency (YJA) is responsible for overseeing completion of the plan and provides some of the elements, such as behaviour programmes or community service. While many of the young people we spoke to did not like being under supervision and were often frustrated at all the 'talking' that they were expected to do, they all spoke highly of individual YJA workers.

The strengths of the system are that:

- young offenders make the links between their behaviour, the conference discussion and the plan;
- young people fully participate in the process and are held to account for their behaviour and what they will do to make amends;
- those conducting the conference are well trained, professional in their behaviour, fair in their approach and supportive of those attending;
- the community service element allows the young person to 'do good' in a way that re-integrates them into society and underpins pro-social norms and behaviour.

According to CJINI⁴³, the professionalism, commitment and skills of the staff and management of the Youth Conference Service and the creation of a specialist youth conference coordinator role has been particularly critical to its successful launch and implementation in NI. A detailed study of 16 alternative criminal proceedings for responding to youth offending covering jurisdictions in the UK as well as internationally concluded that the restorative youth conferencing system adopted in Northern Ireland provided the best approach⁴⁴. We concur with the view that youth conferencing in NI has proved highly successful, attracting interest from other jurisdictions in the UK and internationally, and is an achievement of which Northern Ireland can be rightly proud.

The UN's Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (2002) emphasise the need for informed consent (including awareness of the possible consequences), reasonableness and proportionality within the agreements reached, awareness of the disparities of power within the meeting and ensuring that there is no coercion or unfair inducement to accept restorative outcomes. On the whole (but see below), we found these principles to have been upheld and do not see the need for radical change. However, the timing of this review provides a valuable opportunity to take stock, after 5 years, of how well youth conferencing is working. So in addition to consulting widely, we undertook, as part of this review, a small-scale study of a random

43 CJINI (2008). *Report on the Inspection of the Youth Conference Service in Northern Ireland*.

44 Independent Commission on Youth Crime and Anti-Social Behaviour (2010). *Time for a New Hearing*.

sample of recently agreed conference plans involving a total of 55 young offenders attending a total of 63 conferences. We cautiously draw on the findings of this small study in order to support our overall assessment of youth conferencing.

3.7.1 Victim participation and satisfaction

One of the most important elements of restorative justice is that, unlike the youth court, it places the victim at the heart of criminal proceedings. As a relatively new introduction to the NI youth justice system, it is therefore important to establish whether youth conferencing meets the needs of victims (as well as offenders) and in doing so is likely to secure the confidence of the public. Direct victim participation increases the potential impact on the offender and is therefore an important requirement for a successful conference outcome. Every effort should therefore be made to secure victim participation.

According to victim participation figures published by the YJA for 2009/10 victims attend 74% of conferences but there are many categories of victims - general, indirect, direct, personal, community, representative - and it is not entirely clear who has attended or in what role. We understand that the person directly affected – emotionally, physically, psychologically or materially – by the offence is referred to as a personal victim, and these were present in half of all youth conferences in 2010. Given the lack of clarity around victim participation, we welcome that the YJA is now reviewing the measurement of victim attendance.

A victim satisfaction target of 75% has been achieved every year since 2006 when it was first introduced and in 2009/10 was as high as 84%, which is excellent. In contrast to the Youth Court, conferences prioritise the views of victims and we are pleased to see that victim satisfaction rates are so high; nevertheless, continued effort should be made to ensure the involvement of personal victims whenever possible.

3.7.2 Delay affecting youth conferencing

Youth conferencing incorporates many of the characteristics most likely to reduce re-offending, particularly where it operates on a timely basis. The conference plan is usually made within four to six weeks of the PPS or the court's decision to order a conference. In some cases, perhaps because of anxiety on the part of a victim or an offender about the process, a longer period is both necessary and desirable. During the preparatory period the offence is discussed with the offender, his/her family and the victim. Consideration is given to how the family might offer support in the future and what the offender might do to make amends. This period is as important as the conference

itself. However, the risks of these positive elements being undermined increase as the period of time between an offence being committed and a plan being made lengthens.

The unproductive and potentially damaging delay is that which occurs prior to the decision being made to prosecute or to the PPS to order a conference. The average time from incident to conference referral, which was reported to be 210 days in 2007, is increasing. In our small-scale study, the length of time taken to get from incident to referral ranged from 3 days to 675 days with an average of just under 200 days. We find it difficult to comprehend how some cases can be referred within a few days whereas others take more than a year. The time from incident to disposal was even longer, with an average of nearly 250 days. We have even come across examples where programmes for addressing behaviour were agreed long after the young offender had stopped offending. Delay also impacts on child victims (1 in 6 of our sample of youth conferences involved a child victim), particularly those who are anxious to see the matter addressed.

In its report on Youth Conferencing in 2008, CJINI emphasised the importance of minimising the time it takes to complete a referral in order to ensure that an offender can make the link between the conference and their offending behaviour. Children and young people learn by their mistakes, which is part of growing up. But to do so they need to be able to move on and delays of this magnitude only serve to hold them back. The issue of delay in responding to their offending behaviour is a serious concern that we return to.

3.7.3 Conference plans

Article 40 of the UNCRC clearly states that children who offend should be dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the offence they have committed. We found that in most cases plans contain requirements which are proportionate to the offence and take account of the needs of the offender. However, since conferencing was introduced in 2006, the average length of diversionary youth conference plans has been increasing. Over the last five years, the proportion of diversionary plans that are over 6 months has increased from 12% in 2006/07 and 26% in 2007/08 to 41% in 2010/11. Five years ago more than a quarter of plans were for 3 months or less, now it is only 13%.

A similar picture emerges for court ordered plans, although the average plan length is higher overall. Over the last five years, the proportion of court ordered plans that are over 6 months has increased from 25% in 2006/07 and 43% in 2007/08 to 56% in 2010/11. Five years ago 16% of court ordered plans were for 3 months or less, now it is only 8%. In the same period, the proportion of conferences which end with no plan has been steadily declining. We feel these two trends – the increasing length of plans and the reduction in the use of no plan – need to be looked at.

It is important that conference plans are appropriate and proportionate, so it is with some concern that we found that in addition to getting longer, some plans seem to impose too many requirements. Community service seems to be routine for much offending irrespective of the particular offence or the victim's perspective and in some instances, the content of a conference plan seems irrelevant to the offence (e.g. the inclusion of alcohol counselling where no need was identified or an offending behaviour programme where the risk of re-offending was very small). Inappropriately extensive or misdirected plans waste resources, can increase the risk of re-offending and may ultimately undermine the young person's rights.

3.7.4 Multiple conferences

One concern that has been raised with us on more than one occasion is whether youth conferencing provides an effective way of dealing with persistent offenders. In the last three years, about 3 out of 4 young people referred to a youth conference (whether by the PPS or the court) are referred just once and nearly 9 out of 10 are referred no more than twice.

The proportion of young people referred more than 3 times was about 6%. However, persistent offenders can cause much harm, often in relatively short periods of time, so although the numbers are small, the potential harm they may cause may be considerable. When young people are required to attend more than one or two conferences, the ordering of the cases and how the young person can make sense of the conferences, plans and associated court appearances can cause difficulties. These matters need attention.

It has been suggested to us that the judiciary should be given discretion over whether or not to order a youth conference, particularly where persistent offenders/multiple conferences are involved. Intensive supervision combined with structured approaches to tackling offending and resolving problems (such as that operated through the Priority Youth Offender Project) may be a more effective approach to reducing the offending of persistent serious offenders than a conference plan. Although there are clearly difficulties with the number of conferences and conference plans persistent offenders are subject to, we are not convinced however, that the restorative approach is wrong in principle for persistent offenders. The conferencing process in itself can have a significant impact at any stage on a young person, and the menu of elements that can be part of a plan are sufficiently broad and flexible to allow for a bespoke and scalable response to address escalating offending. Furthermore, the victim has a legal right to participate in a restorative youth conference, irrespective of the offender's involvement in previous conferences.

Our considered view is that it would be preferable to require conference coordinators to exercise their discretion by referring appropriate cases back to court having spoken with the offender and the victim and considered the offender's pattern of offending and previous responses to conference plans. This would need to be accompanied by clear guidance and would need to be monitored, but would have the added benefit of retaining youth conferencing as the default position in law. The option of introducing judicial discretion, which would require legislation, would be needed only if coordinators were not exercising their discretion, or not exercising it wisely.

It has also been suggested to us that the timescale for completion of a plan should be extended beyond 12 months to up to 3 years, again in response to the problem of persistent offending. In view of the existing trend towards longer conference plans, we are concerned that this would merely serve to exacerbate this. We are however of the view that there should be greater scope for some conferences to end without a plan and different offences being brought together in one plan where appropriate. The experience of the conference itself, with all of the preparatory work preceding it, does in our view constitute a sufficient response in some cases.

3.7.5 Effectiveness

The effectiveness of criminal justice interventions are often measured in terms of re-offending or re-conviction rates, although both have limitations⁴⁵. However, in the absence of better measures, it is worth citing the re-offending outcomes for those attending youth conferences. In 2007 and 2008⁴⁶ (there is no data yet covering more recent years) the figures look encouraging, particularly for diversionary youth conferences. Whereas in 2007 and 2008 the one year re-offending rates for those young offenders who received community based disposals (for example a probation order or attendance centre order) were 44% and just under 50% respectively, the equivalent rates for those who received court ordered youth conferences were 38% and 42% and for diversionary youth conferences 22% to 20% respectively⁴⁷. Although those receiving community disposals and court-ordered conferences will tend to have committed more serious offences and are therefore more likely to re-offend, it is important to recognise that 4 out of 5 young people who attend a diversionary youth conference do not go on to commit further offences in the following year.

Based on these outcomes, our own observations and the views of many others, we agree with the CJINI that restorative justice should be at the core of the NI youth justice system. In this spirit, we

⁴⁵ The data fails, for example, to take account of the type of offence or the frequency and seriousness of re-offending, which is likely to be lower for conference participants. In comparing offenders, the existence of previous convictions or their characteristics need to be addressed. A more valid comparison based on predicted rates has not yet been undertaken but is being planned.

⁴⁶ D Lyness and S Tate (2011) *Northern Ireland Youth Re-offending Results from the 2008 cohort*, Statistical Bulletin 2/2011.

⁴⁷ 2008 report shows higher re-offending rates when the re-offending dealt with by diversionary disposals is taken into account. This was the first year such disposals have been included in the analysis, therefore no comparison is possible with 2007 rates.

would like to make a number of recommendations that may help to refine and embed the process further, building on the success already achieved.

We therefore recommend that:

10. *The success of the Youth Conferencing approach should be built on by:*

- a. maximising direct victim participation rates;***
- b. ensuring conference outcomes are proportionate and relevant to the offending;***
- c. reducing the time taken from arrest to conference disposal; and***
- d. ensuring coordinators use their discretion to return to court those cases which in their professional judgement would be better dealt with formally.***

3.8 The Youth Court

"I didn't know what the judge was saying". (A young person)

The Review of Criminal Justice (2000) made a number of recommendations in relation to youth justice, some of which have been implemented.⁴⁸ By far the most significant has been the introduction of youth conferencing, which is now the main mechanism for dealing with offending by children and young people in Northern Ireland and which we have already commended. Other changes included the incorporation of 17 years olds into the youth justice system and the introduction of a number of changes designed to make the youth court layout and process more child-friendly for victims and offenders alike. We understand that the Judicial Studies Board has also provided child-centred training for the Judiciary, including problems relating to the conduct of proceedings in Youth Courts. This is all welcomed.

However, despite these changes, and having observed the Youth Court in action ourselves, we are concerned that some of the issues raised over a decade ago have not been adequately addressed. The Criminal Justice Review Team were unimpressed with *"the way in which the prosecution and defence advocates handled the cases, and noted the limited opportunities afforded to the defendant to participate and for his or her parents to participate"*. We witnessed the same. More worryingly, it raised concerns about how the Youth Court operates, drawing attention in particular to *"the length of time it takes for cases to be disposed of"*. There is an average of 4.7 adjournments per case in the youth court, which we discuss more fully in the next section, but we raise it here because it serves to illustrate our firmly held view that the court system needs to embrace change as much as the police and other agencies.

⁴⁸ Implementation of the Criminal Justice Review's recommendations was reported on by Lord Clyde, Justice Oversight Commissioner, in his final report in June 2006, which is available on the CJSNI website (as at 16 August 2011).

While there is now a welcome lack of formality in dealing with children's cases, our impression – and it is only an impression – is that court proceedings appear to be disorganised, with lawyers being unprepared and almost too casual in their approach. This arguably demonstrates a lack of respect for the judicial process, and for those, particularly the young people, involved in it.

The Criminal Justice Review recommended the development of guidelines for the operation and layout of the Youth Court. These have been produced and are in our view, perfectly adequate both in terms of content and language. The guidelines⁴⁹ cover issues such as:

- entrances and waiting areas;
- courtroom layout;
- seating arrangements for the young person;
- hearing and understanding proceedings;
- robes and wigs;
- security presence;
- special measures;
- persons allowed to attend; and
- the giving of evidence.

We are however puzzled by the disjunction between what is meant to happen in court (according to the guidelines) and what actually happens. From our observations, it appeared to us that the presence of the young person was largely an irrelevance and their understanding and participation limited. Parents, if they attended, were hardly more enlightened or engaged. This was exacerbated if the young person had a speech and language or other communication difficulty, an issue that was brought to our attention by a number of people and was also raised over a decade ago by the Criminal Justice Review. Interestingly, and despite some concerns expressed to us about the use of live video links for children in custody, children's involvement and understanding appeared to be somewhat greater in those cases because they were spoken to directly.

The lack of preparation and attention to detail on all sides is, we feel, not conducive to the fair and effective delivery of justice. So for example in a number of cases which were being listed for contest at the next court appearance, the requirement for special measures for young witnesses was not considered at the outset. In those cases, it was left to the District Judge to prompt consideration of the need for these measures to ensure the contest would go ahead as scheduled and on an appropriate basis. On other occasions, those acting on behalf of the young defendant appeared to be unaware of the child's instructions, their background and their progress on other court orders.

⁴⁹ NICTS (2006). *Guidelines for Operation and Layout: The Youth Court*, and NICTS (2006). *The Youth Court: A Guide for Children and Young People*.

As already mentioned, the problem was raised by the Criminal Justice Review over ten years ago. It recommended: *“Defence and prosecution advocates should be encouraged, through professional education and development, to enhance their expertise in respect of handling juvenile cases and their awareness of the human rights instruments and jurisprudence as they relate to juveniles”*.

This raises questions about the status accorded to the Guidelines, and how a consistent standard of approach in the Youth Court can be developed and monitored to ensure compliance. We appreciate that the independent nature of the judicial system means that external scrutiny and inspection is not possible. But there is a serious children’s rights issue here in terms of compliance with the fair trial provisions of the ECHR and the right to effective participation that is a central principle of the UNCRC.⁵⁰

We believe these problems could be largely addressed if all professionals working in the youth justice system were youth specialists.

We also believe greater specialisation would be more readily achieved if there were a single youth court jurisdiction for the whole of Northern Ireland. At present the low number of youth defendants being dealt with in some courts and the spread of business across 17 court areas militates against specialist expertise in youth matters. Specialists working within a single jurisdiction would ensure a greater understanding of the particular social, developmental and individual needs of children and young people, including those with speech, language or other communication difficulties. Perhaps this is a matter that the Lord Chief Justice and the Presiding District Judge in the Youth Court could consider in conjunction with their colleagues on the Bench.

We therefore recommend that:

- 11. The status and content of the Northern Ireland Courts and Tribunals Service Official Guidelines for Youth Courts should be reviewed and arrangements developed to ensure adherence on a consistent basis.***
- 12. All judges, lay magistrates and lawyers working in the Youth Court should be specially trained and accredited to work within a new, single youth court jurisdiction.***

⁵⁰ The UN Committee on the Rights of the Child made specific comment on this in its 2009 General Comment (No. 12) on the Right to be Heard. The matter was also addressed in the Council of Europe’s Guidelines on Child-Friendly Justice (2010).

3.9 Delay

Once children enter the system, there is one issue, as already alluded to, which stands out above all others as being in urgent need of reform: the unconscionable delay in dealing with cases across the criminal justice system. Whilst it may be too simplistic to say that justice delayed is justice denied, in NI the problem of delay is so endemic that we are concerned that justice is indeed being denied for victims – often children themselves – and offenders alike. This is a serious problem which should concern every professional who works in the criminal justice system. It impacts on virtually every judicial process and practice, from bail and remand to sentencing and rehabilitation. It erodes confidence in the criminal justice system and has the potential to undermine the rule of law itself by giving violent elements within communities the opportunity to impose their own form of swift, vigilante justice.

3.9.1 The story to date

The problem of delay – sometimes referred to as avoidable delay – has been repeatedly highlighted in successive CJINI reports. In their most recent report⁵¹, victims and witnesses said that avoidable delay was affecting their confidence in the justice system and the Inspectorate warned that this could undermine the quality of justice. At the time of drafting this report, we met again with the Chief Inspector and his staff who informed us that current work on victims and witnesses in the justice system was likely to re-emphasise these points.

The CJINI reports also highlight a number of other issues. There is, in their view, an adjournment ‘culture’ within the Youth Court system with an average of 4.7 adjournments in each case. We cannot be certain about the reasons for adjournments in every case but the sheer number of them suggests either a high degree of unpreparedness or a lack of determination to bring the case to a speedy conclusion. We believe that in general, decisions to adjourn are well-motivated. So for example adjourning for a number of charges to be brought together at the one hearing makes a lot of sense. But the delay that adjournments introduce and the impact this has on everyone involved can easily outweigh the gains. If nothing else, it means that the distance between the offence and any consequences that might follow becomes too great to have the desired effect of delivering justice to victims or addressing offending behaviour.

Multiple adjournments can also unnecessarily prolong the bail and remand process. Long periods spent on bail increase the risk of breach and/or further offending and long periods spent on remand can be hugely disrupting and damaging. Neither seems to us to be in the best interests of the child. One of the consequences of this is that the Juvenile Justice Centre, as already mentioned, is being used primarily as a remand centre rather than for sentenced children, which is a huge waste of an expensive resource.

⁵¹ CJINI (June 2010). *Avoidable Delay: A thematic inspection of avoidable delay in the processing of criminal cases in Northern Ireland*.

We recognise that considerable effort has been made to address the issue of delay over a number of years. Dedicated Action Teams have been established, targets have been set and performance monitored, measured and reported to successive Ministers. There is no doubt in our mind that the system takes the issue of delay very seriously at the highest level. It is however inexcusable that a young person accused by summons of committing an offence has to wait on average 259 days before the matter is resolved. What parent, faced with disciplining their child for some wrongdoing, would wait nine months before doing so? As tables 4, 5 and 6 demonstrate, each successive initiative has delivered at best only limited improvements and at worst, has made no impact at all.

Table 4: Average calendar days taken to process youth charges and summonses, 2006/07-2010/11 (Youth Court)

	2006/07	2007/08	2008/09	2009/10	2010/11 ^b
Youth Charge Cases (Date charged to date of disposal)	166	174	171	130	123
Youth Summons Cases^a (Date accused informed to date of disposal)	277	272	291	256	259

Source: CJSNI Standards Performance

Notes: (a) Excludes cases where bench warrants were issued; (b) Data for 2010/11 is provisional

Table 5: Youth Conferences – Average no. of calendar days from date of offence to date plan approved

	2006/07	2007/08	2008/09	2009/10	2010/11
No of Plans	900	1,486	1,405	1,516	1,611
<u>Average no. of calendar days</u>					
Diversionary	214	232	266	244	273
Court Ordered	258	273	266	251	250
Overall	241	255	266	247	262

Source: YJA Annual Workload Data 2010

Table 6: Youth Conferences – Average no. of calendar days from date of referral to date plan approved

	2006/07	2007/08	2008/09	2009/10	2010/11
No of Plans	900	1,486	1,405	1,516	1,611
<u>Average no. of calendar days</u>					
Diversionary	58	65	85	81	91
Court Ordered	44	51	53	47	50
Overall	49	57	70	65	72

Source: YJA Annual Workload Data 2010

It is concerning that youth conferences are no less immune from delay than formal court proceedings. The average time from the date of the offence to the date a plan is ratified is approximately 250 days. If anything, the time taken has increased over the last five years, although we recognise that there has been an increase in the number of referrals. An element of this time is used constructively in preparing for a conference, but once the referral stage has been reached, it still takes a relatively long time to process cases: the average time from the date of referral to the date of a plan is ratified is about 70 days and again this has increased over the years.

We were particularly concerned to learn that the average time it takes to complete a diversionary youth conference, whether taken from the date of arrest or the date of referral, has increased substantially since they were introduced in 2006. The average time from offence to disposal has increased by 27% in the last five years and from referral to disposal by an even greater 57%. Even if the first year of operation is discounted (i.e. when there were fewer cases), substantial increases remain (18% and 40% respectively).

We explained earlier that diversion from formal proceedings is based on the principle of proportionality. One of the main rationales for diverting young offenders from formal criminal justice proceedings – and a key component of this principle – is to provide a much quicker response to what are relatively minor offences. In the case of diversionary youth conferences, this is clearly not the case. According to an evaluation of the Youth Conference Service, 1 in 5 offences referred to diversionary youth conferences are ‘minor matters’. In our more recent small-scale study of youth conference cases, we also came across offences that in our opinion were too trivial to be dealt with by way of a conference. Given the length of time, degree of formal intervention, level of resource and in a minority of cases the minor nature of the offences which end up being formally processed, we think that diversionary youth conferences should be renamed PPS ordered youth conferences. This would more accurately reflect what they are – a diversion from court – rather than what they are not – a diversion from the formal criminal justice system and the acquisition of a criminal record.

It is particularly worrying that diversionary youth conferences seem to take longer than court ordered ones, which is a reversal of the position four years ago and seems wholly counter-intuitive. The overall process is not monitored and no end-to-end targets have been set to improve efficiency, either for court ordered or diversionary youth conferences. The increasing delay in diversionary youth conferences in particular needs urgent attention.

3.9.2 Towards a solution: starting with the young

In youth, the days are short and the years are long. For young people caught up in the youth justice

system, the delays can be interminable. Growing up is never easy and both victims and offenders wish nothing more than to put incidents behind them and move on. Tolerance of youth is not easy either, but a wise society is one which allows youth some latitude but firmly expects them to learn from their mistakes. If ever there was an issue in criminal justice where reform should start with the youth system, it is the issue of delay.

In practical terms, the numbers are small and cases in the main are not subject to the complexities of the Crown Court arrangements. Reducing delay in the youth justice system is simply a more manageable task than reducing delay across the adult system. If our proposals to divert more young people away from the system are implemented in full, resources within the system will be freed up to allow much quicker processing of those that are left. The lessons learnt can then be applied to the much larger adult system.

We firmly believe that the effect of delay on children is more significant than in adult cases and should be accorded greater priority. We emphasise further that delay not only runs contrary to imperatives set out in legislation in the Justice (NI) Act 2002, but also impacts disproportionately on the lives of some of Northern Ireland's most vulnerable children. Most importantly, we would suggest that this level of delay runs counter to Article 6 (1) of the European Convention on Human Rights, which states:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

The amount of attention this issue has attracted – in particular from well-motivated public servants, criminal justice inspectors and practitioners – means that the solutions are well known. The introduction of the Causeway system (electronic information sharing between criminal justice agencies) should mean that the necessary information required for closely monitoring timeliness targets is now available. And some progress has been made recently to address the lengthy delays arising from poor case preparation. But, if anything, the situation appears to be becoming worse or at least no better. Efforts to date seem to have concentrated on each individual organisation's internal processes rather than a true end-to-end process across all of the agencies. What is required, it seems to us, is a significant shift in approach, driven by strong political leadership from the top and effective professional co-operation with joint accountability across all criminal justice agencies in the field, including the judiciary.

3.9.3 Statutory time limits

We think that a step change in the way this issue is addressed is urgently needed. To this end, we

are of the opinion that statutory time limits covering the period from arrest to disposal (i.e. plan or sentence) is the best way of helping this step change to happen. This, in our view, is the only way to tackle the late plea culture, the unambitious targets and the blame culture between agencies and professions.⁵²

We have not reached this position lightly. We are fully aware that in November last year David Ford, the Minister of Justice, answered questions in the Assembly on statutory time limits. He confirmed his determination to reduce the time taken to process cases, but resisted the introduction of statutory time limits on the grounds that the system was not yet functioning well enough. In our view, introducing statutory time limits is the only way of getting the system to function well enough. We think they will achieve the efficiencies required in case preparation and management by requiring agencies to work collaboratively and be jointly accountable for achieving the scale of reductions that are required, while also serving the needs of victims, who above all else are keen to see that justice is done.

In our final round of discussions with the relevant agencies, while identifying some potential challenges, they ultimately felt this approach would galvanise and transform the process. It is also the conclusion reached by the Criminal Justice Inspection NI in their 2010 report on delay. We were pleased to learn that some innovative proposals are already being explored and piloted to improve performance. One such development is the increased use of “Immediate Diversions” by telephone, which is now being extended to include diversionary youth conference referrals in the Omagh area.

One idea put to us is that, following the questioning of a child by the police, the child should then return to the police station a week later to be charged, summonsed, cautioned/warned, diverted to a youth conference or told that no further action will be taken. On this return visit relevant papers can be served and a full explanation provided. Consent to diversionary measures can be obtained which can either be implemented ‘on the spot’ or arrangements made for implementation. We think this is an excellent idea. Not only does it speed up the process but it provides for proper explanations and informed participation by young people and their parents.

By the time our report is published and has been consulted upon, another year will have passed since the Minister made his announcement. At the time he confirmed that the introduction of statutory time limits was an option he was willing to return to in the future. We would urge him to consider doing so in relation to the more modest (but in our view more urgent) task of addressing delay in the youth justice system.

⁵² This is also consistent with the Council of Europe’s 2003 Recommendation on New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice, which suggests setting short time periods for each stage of the criminal justice proceedings.

Any provisions which may be introduced should ensure that there is adequate protection for victims. By this, we mean that a case should not fall simply because of the length of time taken to bring to it court. We recommend that the prosecution is given the right to appeal court decisions not to extend time limits in specific cases, but safeguards should be introduced to ensure that this is truly exceptional, is not done lightly and does not become routine.

We are aware that provisions already exist in the Criminal Justice (NI) Order 2003 for the introduction of statutory time limits, and that these could be commenced separately for the youth justice system. However, as drafted, we do not regard them as adequate as they do not make provision for statutory time limits on an end-to-end basis. This final point is critical. For offenders, but more importantly for victims, it is the whole of the process that impacts on them rather than any of its component parts. Legislation would therefore have to be either amended or redrafted to take account of this. We further suggest that the time limit for the end-to-end process should be no more than 120 days. This will place a premium on the Criminal Justice Delivery Group in particular to drive the process and ensure that all parts of the system are primed and ready to contribute.

We therefore recommend that:

- 13. Urgent attention needs to be paid to driving down the time taken for all diversionary disposals, in particular diversionary youth conferences, which should be renamed PPS ordered youth conferences. This process should be closely monitored, with the use of appropriate targets, by the Criminal Justice Board.***
- 14. Work to tackle the problem of delay should prioritise young offenders. The lessons learnt should then be applied to the adult criminal justice system.***
- 15. Statutory time limits should be introduced for all youth justice cases, providing for a maximum period from arrest to disposal of 120 days. This provision, which should include protection for victims from injustice in cases where the time limits are exceeded, should be contained in the next Justice Bill and thereafter implemented within 12 months to ensure all agencies have enough time to prepare. The Criminal Justice Delivery Group and all relevant agencies should find the means to significantly reduce the time taken in advance of the legislation. The Criminal Justice Delivery Group, together with the Judiciary, should oversee and be held to account for delivering the time limits.***

3.10 Custody

The decision to deprive a young person of their liberty is rarely if ever taken lightly. Custody is generally reserved for those young people who commit serious crimes or create considerable

harm through other ways, such as committing large numbers of offences in relatively short periods of time. In principle, and as required by the UNCRC and other international treaties, custody is only to be used as a last resort and for the shortest possible period of time. Furthermore, they should be detained separately from adults, unless it is in the best interests of the child not to be so.

In Northern Ireland, we have already drawn attention to where we believe this principle is not being appropriately upheld, i.e. on remand. In contrast, we commend the big reduction in the use of custody as a sentence for young offenders over the last 15 years and the replacement of outdated and inappropriate custodial provision, which was heavily criticised in the Review of the Criminal Justice System, with a new, state-of-the-art facility, almost certainly unrivalled elsewhere.

3.10.1 Custodial facilities

Currently, young people remanded or sentenced to custody in Northern Ireland are either held in Woodlands Juvenile Justice Centre (JJC) or in Hydebank Wood Young Offenders’ Centre (YOC). Woodlands, which opened in 2007, can hold up to 48 young people aged between 10 and 18, although it is limited to between 42 and 44 for operational reasons. It is currently staffed for 36 but is rarely full. All girls and young women under the age of 18 who are remanded or sentenced to custody go to Woodlands, as do the majority of boys. The remainder of the boys, mostly 17 year olds, are sent to Hydebank Wood, where they are accommodated separately within a prison facility that also houses young men and all adult women prisoners.

3.10.2 The decline in the use of custody

Since the programme of youth justice reform was initiated in the late 1990’s, the number of young people held in custody – based on a daily headcount – has fallen dramatically. The numbers admitted to custody, as a proportion of the overall number of children who offend, is very small – less than 1% in total – and the average number in custody at any one time is much lower than in England and Wales, as Table 7 shows.

Table 7: U18 Average Custody Population per 10,000 Population Aged 10-17

	2005/06	2006/07	2007/08	2008/09	2009/10
NI U18 Average Custody Population (a)	2.8	2.4	2.4	2.2	2.2
England & Wales Average Custody Population (b)	5.2	5.4	5.4	5.4	4.6

Source: DoJ Statistics & Research
Notes: (a) Figure for NI refers to under18 population in JJC & YOC/Prison;
(b) Figure for England & Wales includes Secure Children’s Homes, Secure Training Centres & Young Offender Institutions

Of course this does not tell the full story, as the earlier section on remand demonstrates. In reality, many more young people experience custody than these figures suggest, mostly through remand or by being admitted to custody for short periods under PACE. As we also said earlier, we believe (but cannot robustly evidence) that the over-use of custodial remands helps to explain the very low number of young people in custody under sentence. Furthermore, as mentioned above, not all young offenders held in custody are in Woodlands; some are held in Hydebank Wood, an adult prison establishment. We return to this below.

3.10.3 Woodlands Juvenile Justice Centre

“There’s no need to complain about Woodlands – staff are 100%”. (Young Resident)

Woodlands is a modern, state-of-the-art secure unit which, through good design and the use of modern technology, provides a safe and secure physical environment suitable to the needs and risks posed by those in its care. The Centre is run by the Youth Justice Agency and inspection reports are excellent⁵³. The staff are all youth specialists and social work/education trained, with interactions between staff and young people conducted on a pro-social, role modelling basis. Every moment of the regime’s day is focused on activities that might enable a young person to lead a better life on release. Education is full time and includes vocational, practical and social skills elements. There are a number of groups that run programmes dealing for example with offending and drug and alcohol misuse, or providing one-to-one counselling or therapy. Specialist mental health treatment services are available through the employment of four mental health nurses, a full-time forensic psychologist and a part-time consultant child and adolescent psychiatrist and particular attention is paid to the practical arrangements for returning a young person to the community, such as accommodation and support on release.

The Review Team were very impressed with the facilities, the regime, the physical environment, the training and professionalism of the staff and the overarching social work ethos. We were particularly surprised by the almost without exception positive comments from the children we met: whether at Woodlands or Hydebank Wood, all spoke well of their experience at Woodlands and all had felt safe there.

Some said they preferred what they felt was a more adult regime in Hydebank Wood where they could ‘lie in their beds all day’, but all the young people we spoke to were clear that the staff and day-to-day routines at Woodlands were directed at helping them to sort out their problems and stay out of trouble in the future. In Woodlands, Northern Ireland not only has a cutting-edge

⁵³ See, for example, CJINI Inspection of Woodlands Juvenile Justice Centre, 21 May 2008.

facility it should be proud of, but a facility that in our view constitutes best practice internationally. However, while Woodlands is undoubtedly a beacon of best practice, it is let down by the system within which it operates.

The critical factor is a constant churn of children passing through the Centre on admission and release, something which we have previously described as the ‘revolving door’ syndrome. And this problem seems to be increasing: admissions to Woodlands in 2010/11 were at a 5 year high, as can be seen in Table 8:

Table 8: Admissions to JJC

	2006/07	2007/08	2008/09	2009/10	2010/11
Initial Admissions	333	346	271	349	411
Total Admissions	444	473	357	474	551

Source: YJA Annual Workload Data 2010

Note: Initial admissions are new admissions to the JJC for that year. Total admissions are new admissions plus internal changes of status, such as movement from PACE to Remand or Remand to Sentence

The regime at Woodlands is best suited to ensuring those held on a sentence of the court have the best possible chance of stopping offending on release. The constant stream of young people briefly passing through, with all the expense each new admission demands, threatens the capacity of the Centre to meet the important task for which it was designed.

3.10.4 Hydebank Wood Young Offenders’ Centre

In their interim report⁵⁴, the Northern Ireland Prisons Review concluded that Hydebank Wood, an adult prison establishment, is not an appropriate environment for children. According to the Prisons Review Team, the regime available to them is extremely poor, sometimes worse than for older prisoners and access to suitable education and training workshops is very limited and does not offer enough to support desistance on release. The number and training of staff, the quality and safety of the accommodation and the activities and interventions available were all judged to be wanting. In their view, alternative suitable accommodation that meets the best interests of the child needed to be found elsewhere. Having met and listened carefully to the Prisons Review Team and having visited Hydebank Wood ourselves on more than one occasion, we found ourselves fully concurring with this view.

When 17 year olds were brought within the ambit of the youth justice system by the Justice (NI)

⁵⁴ *Review of the Northern Ireland Prison Service, Interim Report* (Feb 2011): http://www.dojni.gov.uk/review_of_the_northern_ireland_prison_service_-_interim_report

Act 2002,⁵⁵ the intention was to treat all under 18 year olds as children. While we acknowledge that under 18 year olds have their own discrete accommodation in Hydebank Wood, and that the regime has been improved in recent times, we do not think that the practice of detaining children in that environment is acceptable. This position also complies with the UN 2007 General Comment on Juvenile Justice, in which it states that placing children in adult prisons *"compromises their basic safety, well-being, and their future ability to remain free of crime and reintegrate"*.⁵⁶ It goes on to say that *"separate facilities should be provided for children deprived of their liberty which include distinct, child-centred staff, personnel, policies and practices"*. In our view therefore, this age group should be detained in Woodlands where all other children are held.

In coming to this view, we understand that there are a series of practical and legislative steps needed to facilitate a managed transition. In particular, attention will have to be paid to removing from the existing Woodlands' population those who are there, in our view, unnecessarily - either because of the nature and level of their offending (i.e. not serious enough) or because of the risks that they pose (i.e. not serious enough). If this particular issue is not addressed, Woodlands will not be able to provide adequate accommodation for all who might need it, especially at peak times. Such a situation must not be allowed to develop, if only because it would not be in the best interests of either the young people already there or the staff who look after them.

This change may require new legislation, or at least an amendment to existing legislation: the current practice of automatically sending most 17 year olds to Hydebank Wood because of their age will need to cease. Careful consideration will also have to be given to transitional arrangements between the two centres for those young people who attain the age of 18 whilst in custody. At a minimum, they should undergo a full assessment of their needs and circumstances, including their developmental age, the duration of the remainder of their sentence and their capacity to 'survive' in an adult prison. The preferred position should be to hold them in Woodlands until their sentence expires, which is in line with the UNCRC Committee's view that children don't have to be moved to a facility for adults on reaching 18 if it is in their best interests and not contrary to the best interests of other children.⁵⁷

Another implication of moving all young offenders out of Hydebank Wood, one which we consider to be serious, is what to do with the one or two highly dangerous (to themselves and/or to others) young offenders who have very specific security and other needs. Although there are very few dangerous young people in the Northern Ireland justice system and each one will be well known to the relevant agencies, the risks they pose are very real. It is important to ensure that if placed in

⁵⁵ See Section 53.

⁵⁶ UN General Comment on Juvenile Justice, 2007.

⁵⁷ UN Committee on the Rights of the Child, General Comment No. 10 on Juvenile Justice (2007), para 86.

Woodlands, they do not pose a risk to the other children (or indeed to the staff) or to the facility's regime and ethos. One option would be to create a special provision within Woodlands alongside the development of additional procedures and staff training to ensure any risks are effectively managed. Other options should be considered.

3.10.5 Looked after children⁵⁸

As previously discussed in relation to remands, there is an over-representation of looked after children, particularly those in residential care, entering the justice system and ending up in custody. More than a third (37%) of admissions to Woodlands are looked after children, compared with just over a quarter (27%) in England and Wales. This has been the subject of considerable discussion in Government (especially the Department of Justice and DHSSPS) and among the responsible Health and Social Care Trusts. Improvements in monitoring and scrutiny arrangements have provided better information and a more focused approach to tackling the problem and there have been some positive developments in practice across the care system. However, in our considered view, the level of over-representation remains significant and the current efforts to tackle the problem should remain a priority. This is especially so where Woodlands is being used as a place of safety under PACE procedures.

We therefore recommend that:

- 16. *The practice of allowing the courts to send persons under the age of 18 to Hydebank Wood Young Offenders' Centre should cease. Arrangements should be put in place to manage their transition to Woodlands Juvenile Justice Centre no later than 18 months from the publication of this report. As part of this, suitable options for accommodating a very small number of dangerous young offenders will need to be explored.***
- 17. *Young people who attain the age of 18 while in custody should have their place of detention determined by an assessment of their circumstances, paying particular attention to their needs and best interests.***
- 18. *The practice of using the Juvenile Justice Centre as a place of safety for PACE procedures for any child should be reduced to an absolute minimum through the measures outlined in this report (recommendations 8, 9 and 19). The number of PACE places in Woodlands JJC should be limited to one or two.***
- 19. *Looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population.***

⁵⁸ 'Looked After Children' includes those in residential care, foster care and family or other placements.

3.11 Reintegration and rehabilitation

“It’s better to get a beating from the paramilitaries than a criminal record.” (A young person)

One of the most disconcerting facts about formal responses to youth crime is the lack of success. The more deeply immersed in the youth justice system a young person becomes, the greater the likelihood that their offending behaviour will worsen rather than improve. Contact with the system actually outweighs any deterrent effect it may have⁵⁹. And those who enter custody are the least likely to desist from crime. While sometimes providing short term respite for communities, custody largely constitutes an expensive way of making a bad situation worse.

Young people who experience custody, whether on remand or through sentence, are at considerable risk of becoming detached from important support systems. This makes effective reintegration highly problematic, re-offending more likely and protecting the public very difficult. It is perhaps therefore unsurprising that the reconviction rates of those leaving custody are so high. Within six months of leaving custody, nearly two thirds (63%) of young offenders re-offend. In Northern Ireland young offenders face some significant barriers to desisting from offending. Most of the young male offenders we spoke to had disappeared out of the education system at about 14 years of age and had no qualifications or work experience to commend them. Additionally, too many young people are leaving custody without stable accommodation to return to and no help with alcohol or drug problems.

In Northern Ireland, we were often told about the additional difficulties facing young people who had got into trouble in their communities and found themselves exiled on paramilitary authority, with the threat of a beating if they returned. Relocation to a different (but safer) community is fraught with difficulty and we have no simple solution to such challenges other than to underline the general principles and effective practices we outline here.

For those returning to their communities, some help is available through voluntary organisations and PBNI. Overall, however, it is not enough, help is not guaranteed and it is provided in a piecemeal way with services inside and outside custody being insufficiently integrated to allow for continuity and a relationship of trust.

⁵⁹ McAra, L. and McVie, S. (2007). *Youth Justice? The Impact of Agency Contact on Desistance from Offending*, *European Journal of Criminology*. 4:3, pp315-45.

3.11.1 Preventing re-offending

There is now a considerable national and international evidence base of what works in promoting reintegration and preventing re-offending.⁶⁰ Effective reintegration requires joined up resources, early assessment of need and continuity of support. As recommended by the Council of Europe, reintegration must start from day one in custody and extend back into the community as well as forwards beyond release.⁶¹ The risk of re-offending can only be mitigated if these complex, multi-layered needs are met through a single, seamless, multi-agency process that sees and treats those released from custody as children first and offenders second.

While the child is in custody, key relationships must be established with those who will be supporting them afterwards in the community. We visited a maximum security facility for young offenders in the Netherlands, De Hartleborgt near Rotterdam, and were impressed with how they reintegrated young people back into their communities. Planning for release starts as soon as the young person arrives and a single professional is assigned to each young offender to ensure continuity from the inside to the outside. For each young offender there is also a single plan to which all relevant agencies contribute. If no member of the family can meet the young person on release, someone is assigned to pick him up. In Northern Ireland, this doesn't seem to be routine. A mother of a young offender told us that nobody was informed about her son's impending release from Hydebank Wood - she just received a phone call from him to say he was out. A young person described to us the difficulties encountered on leaving the YOC without adequate support:

"Since leaving prison there is no structure at all so in a way you're just waiting for stuff to happen but it's not going to happen. Not having a structure is dangerous for any person leaving prison. This leads to...drink and alcohol abuse and this in turn can lead to committing crime."

3.11.2 Night detention

In Rotterdam, the difficult process of reintroducing young offenders back into their communities is mitigated through the use of what they term 'night detention'. This involves the young person going to school, college or a job during the day but returning to a secure environment for evenings, nights and weekends. This reduces interruptions to education, training and employment while

⁶⁰ See for example: NIO (2009). *Reducing Re-offending: A critical review of the international research evidence*. NIO. O'Mahony et al. (2005). *An Evaluation of the Positive Steps Through-Care programme at Hydebank Wood*. School of Law, Queen's University Belfast and CTC Associates ;Ministry of Justice [E&W] (2010) *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.

⁶¹ Council of Europe: Recommendation of the Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (2003); and Recommendation of Committee of Ministers on the European Rules for juvenile offenders subject to sanctions or measures (2008).

maintaining a hold on the young person's liberty until they are fully ready to return to their communities. Offenders are slowly reintroduced to the routines of normal life, cooking and shopping for themselves for example, but if they breach the trust granted to them, they are returned to the full security facility from whence they came. CJINI, the Council of Europe and other international bodies all urge the use of semi-secure facilities as a prelude to release⁶², as did some of the young offenders we spoke to at Woodlands:

"Build a halfway house with staff from Woodlands - get used to the community – so your head wouldn't be pickled when you got out."

We are aware of the rehabilitation and reintegration work undertaken by Woodlands in partnership with Probation and we know that Hydebank Wood has a resettlement unit which addresses accommodation issues. But on the whole, we had the impression that rehabilitation and reintegration are not high priorities and consequently not well resourced. There are however some notable examples of good practice.

3.11.3 Education, training and employment

One of the most effective ways of preventing young people from re-offending is by giving them opportunities for training connected to future stable employment. The Prince's Trust, for example, supports investment in personal development and employability skills training that can help offenders secure employment or move into further education/training. The Trust tries to ensure that support services provided to young people in custody are linked with other support services in the community. Similar employability programmes are run by NIACRO and Include Youth. But these initiatives suffer from insecure project funding, lack of support from mainstream public services and an almost universal absence of robust evaluation, all of which are symptomatic of the overall lack of priority afforded to reintegration work with this group of young people.

3.11.4 Young adults

In line with the remit of the Review, we have focused on young people under 18 who are in the youth justice system. Many of these young people will be over 18 by the time their order or sentence is finished and will be supervised by adult services. Our discussions with young people aged 18-21 in Hydebank and with those agencies working with this age group suggest that the same problems apply in respect of young adults and require similar attention. Additionally, the level and type of support that is offered to a 17 year old as a 'child' is very different to that provided for those who are 18 and understood to be adults. It is important, therefore, that children's services,

⁶² CJINI (2010). *Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland*; Council of Europe (2003) (op cit).

including youth justice services, ensure a proper handover to adult services before withdrawing their support.

3.11.5 Criminal records

It is somehow perverse that while all the research evidence suggests that providing offenders with stable employment is one of the most powerful ways of preventing re-offending, the current system of informing potential employers of a offender's criminal history acts as the most potent barrier to accessing such employment. What chance do young offenders have of securing employment when the only entry on their CV is a criminal record? And how much more difficult is it going to be for these young people to find jobs when the full effects of the current financial crisis hits the Northern Ireland economy? With so little chance of accessing legitimate opportunities for securing income, security and a sense of identity, it is easy to see how for some young people, the attractions of dealing in drugs, stealing from shops or joining a paramilitary organisation becomes a real option.

The burden of a criminal record was recognised by many of the people we spoke to. They expressed their concern that contact with the criminal justice system, even for relatively minor matters, can have serious implications for young people's future life chances. Even those diverted from formal proceedings who are not officially convicted can receive a criminal record that can subsequently be disclosed under pre-employment checks. This can lead to confusion. The public equate a criminal record with a conviction and hence assume that the absence of a conviction must mean no criminal record. This ambiguity is illustrated in the PSNI guidance on Speedy Justice:

"Participation in a Non Court Disposal is NOT a criminal conviction and not routinely disclosed. However it may be subject to disclosure as part of an enhanced criminal record check under prescribed conditions. Police will hold a record of all Non Court Disposals."

In the consultation with young people which VOYPIC (Voice of Young People in Care) carried out for our review, they told us that some young people believed that a criminal record gained as a juvenile would not affect their later life as it would be wiped clean at 18.⁶³ This was in fact recommended in 2002 for non-persistent offenders by the Home Office Review of the Rehabilitation of Offenders Act 1974, but not implemented. More recently, the Magistrates Association in England and Wales has also supported the idea of a clean slate, albeit at the age of 21 and excluding those who have committed sexual and indictable offences.

63 VOYPIC Submission to the Youth Justice Review, April 2011.

It is clearly important for young people to be able to reach fully informed decisions about whether to accept a “diversion” or challenge the case in court. If the disclosure implications of diversionary disposals became widely known, there is every possibility that increasing numbers of young offenders would choose to take their chances in court, thus undermining the whole purpose of diversion.

Disproportionate and hidden consequences of young people’s offending also risk breaching a number of important international obligations. The Council of Europe’s Child-Friendly Guidelines (2010) advise, for example, that the criminal records of children should be non-disclosable outside the justice system on reaching the age of majority, albeit with some exceptions (e.g. working with children).

3.11.6 Disclosure

There is increasing concern that efforts to promote the rehabilitation of ex-offenders should not place vulnerable groups at risk. The Bichard Inquiry, which was instigated following the murders of Holly Wells and Jessica Chapman, triggered a risk-averse culture among employers with increasing numbers seeking enhanced disclosure. This led to an increasing number of instances in which not only “spent” convictions were being disclosed to potential employers but other information held by the police, including diversionary disposals and also, we understand, police intelligence.

We are aware that recent action has been undertaken in Northern Ireland to stem the flow of inappropriate information to prospective employers, but confusion concerning the distinction between diversionary disposals and convictions, spent or otherwise, still needs to be addressed. This has been pointed out in a recent inspection report, so hopefully this will no longer be a concern. We certainly support the Inspectorate’s view that:

“Diversionary disposals are not criminal convictions and should not therefore be disclosed as such due to the potentially damaging effect such procedures could have on young people.”⁶⁴

In 2007, the UN Committee advised that, where diversion has taken place, this should result in *“a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as ‘criminal records’ and a child who has been previously diverted must not be seen as having a previous conviction.”*⁶⁵ Similar restrictions were recommended by the Council of Europe in 2008 with regard to records of community sanctions or measures.⁶⁶

64 CJINI (July 2011). *Youth Diversion: A thematic inspection of youth diversion in the Criminal Justice System in Northern Ireland*.

65 UN Committee on the Rights of the Child. *General Comment No. 10 on Juvenile Justice (2007)*, Para. 27.

66 Council of Europe (2008) (op. cit.).

We accept that it is important for the police, for criminal justice purposes, to hold information about people of whatever age who have committed offences. The issue however is whether such information should be released to anyone outside the criminal justice system. If young people's futures are not to be unfairly jeopardised by their misbehaviour while growing up, there is a need for change. We also recognise the importance of screening out from the workforce those who pose a real danger to children and vulnerable adults. The vast majority of children and young people who offend do not however fall into this category.

We are of the view that the availability of enhanced disclosure certificates has become too wide, which opens the possibility of a disproportionate restriction on opportunities for employment for people of all ages.⁶⁷ This matter is being progressed in England and Wales through the Protection of Freedoms Bill, currently before Parliament, which aims to "scale (the system) back to common sense levels."⁶⁸ The Bill was informed by a review of the arrangements for retaining and disclosing records held by the police⁶⁹. A similar review has been conducted in Northern Ireland by Sunita Mason, with whom we have met to discuss issues of common concern. This report has recently been published, and whilst we have not had the opportunity to consider it in any detail, we do note that our perspective on these issues is somewhat different. It will be for the Department of Justice to consider our respective analyses and to consult more widely on a way forward.

3.11.7 New principles

The legislation on the rehabilitation of offenders is complex, out of date and should be reviewed. Without wishing to pre-empt any changes, we set out below the principles which we feel should underpin any new arrangements.

i. Children must be protected.

If a young offender presents a real and serious risk, there can be no objection to the relevant information being made available as part of pre-employment or pre-training checks.⁷⁰ However, relevancy is best assessed at a time close to the incident and in a transparent process in which challenge is possible.

67 Chivers, K. (2011). *Retention and Disclosure of Criminal Records* (paper prepared for the Review Team).

68 Explanatory Notes to the Protection of Freedoms Bill (Westminster).

69 Mason, S (2011). *A Common Sense Approach - A review of the criminal records regime in England and Wales*.

70 This is consistent with the Council of Europe's 2003 recommendation's advice (*op. cit.*) that "A full needs and risk assessment should be the first step towards a reintegration plan which fully prepares offenders for release by addressing, in a co-ordinated manner, their needs relating to education, employment, income, health, housing, supervision, family and social environment." The Explanatory Memorandum warns that, "If left untreated, they present a risk not only to others, but also to the young people themselves who, on release, are highly likely to continue offending and return to prison."

ii. *The public must be protected*

Responses to youth offending should be based on evidence about what works in terms of protecting the public by reducing further offending. One of the most effective ways to reduce offending is by helping young people acquire stable employment. This means artificial and unnecessary barriers to achieving that aim should be removed wherever possible.

iii. *Children and their families must be treated fairly.*

Disposals offered as “diversionary” must truly constitute diversion away from the criminal justice system and all of the consequences of involvement in that system. Diversionary disposals should not, in principle, constitute a criminal record and be subject to employer disclosure. Where children are convicted, the consequences must be proportionate to the real risk they present, which should be reviewed regularly.

iv. *Children must be given the best chance possible to succeed in life and become responsible citizens.*

As young people approach adulthood and assess their prospects for a fulfilling and responsible life, they should be given every opportunity to put youthful misdemeanours and even serious offending behind them. In most cases, there should be a real possibility of having the “slate cleaned” at age 18 or 21 on application by the young person.⁷¹

We therefore recommend that:

- 20. *Greater priority should be accorded to the rehabilitation and re-integration of young offenders in custody. They should be prepared for release from the outset through, for example, day release for the purpose of education, training or employment and should have continuing access to support on a multi-agency basis.***
- 21. *Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness. Specific actions should include:***
 - a. *diversionary disposals should not attract a criminal record or be subject to employer disclosure;***
 - b. *young offenders should be allowed to apply for a clean slate at age 18;***
 - c. *for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed.***

⁷¹ This is consistent with the 2003 Council of Europe recommendation (*op. cit.*) that young offenders under 21 should not have to disclose criminal records to prospective employers “except where the nature of their employment dictates otherwise.”

3.12 Special groups

During the course of our review we encountered groups of young people with particular problems or concerns, such as speech and language difficulties or mental health problems, which tended to be over-represented in the youth justice system. This is a phenomenon that is not particularly unique to Northern Ireland, although certain groups of young people are more likely to be caught up in the youth justice system in certain countries than others. In Northern Ireland, as mentioned earlier in relation to remand and to those sentenced to custody, one such group is looked after children.

3.12.1 Looked after children

The disproportionate number of looked after children in the criminal justice system and in custody is a common feature in most countries. This is largely due to their vulnerable backgrounds – by the time children are received into care some of them will have already experienced many of those factors indicative of future offending and other poor outcomes, such as abuse and neglect, family strife and instability and poor educational attainment. But it is also due to their status. Thus, as described earlier, children living in care homes are more likely to be referred to the police for committing often quite trivial offences which, had they been committed in their parental home, would not have reached the criminal justice system.

The latest DHSSPS survey (2009) indicates that there are about 2,500 children who are ‘looked after’ in Northern Ireland at any one time. Of these, about 1,600 have been in care continuously for over a year. 44% are under 12 years of age, 35% 12-15 years of age and 22% are over 16. The younger the child the greater the likelihood that they are looked after for child protection or welfare reasons while older children are more likely to be in care for behavioural reasons.

According to the same survey, nearly 1 in 10 young people in care were cautioned or convicted in the previous 12 months, but we are pleased to note that these numbers have halved since 2002. We nevertheless came across examples of young people who offended persistently in one care home but ceased offending on being moved to another or only started to offend on being taken into care. Also, the proportion of looked after children admitted to custody is still nearly 50% higher than in England and Wales. Some children’s homes, accommodating difficult adolescents, seem not to have the same need as others to involve the police in managing behaviour and we think the higher levels of custodial admissions is largely due to the way in which care homes manage children in their care. Details contained in the youth conference plans we looked at also seem to suggest this.

According to discussions we had with care managers, there is a growing problem with young people aged between 15 and 17 who have been living at home or with foster carers but have 'gone off the rails,' behaving in ways their parents cannot cope with. Drug taking, breakdowns in foster placements and occasional violence towards parents are cited as the main triggers for admission into residential care. These are often difficult children to manage and we were impressed with the way in which the staff we met at one home dealt with the daily pressures they faced. Furthermore, residential units that focus on equipping and supporting staff to deal with incidents, often using restorative approaches, seem to have a good record of avoiding criminalisation. However, where staff are poorly trained and inadequately supervised they tend to refer incidents too readily to the police.

If an incident in a care home involves violence the home may refuse to take the child back. We were advised that many of the receptions into both Hydebank Wood and Woodlands were 'homeless' looked after young people in this sense. The Health and Social Care Board along with justice agencies is working hard to find a solution to this problem and new guidance⁷², supported by training has been introduced. The service is also to be commended for adapting well to changing needs - but not yet sufficiently to changes in demand. There is a need for greater capacity within the health and social care system to receive children into care in an emergency, including on bail, and provide the right sort of support to sustain the young person in the community.

3.12.2 Mental health

As with looked after children, those with mental health needs also tend to be over-represented in the youth justice system. An in-house survey carried out by the YJA of offenders under their supervision in 2006 found that 59% showed some sign of a mental health problem. Similarly, the CJNI inspection of Woodlands in 2008 found that of the 30 children in Woodlands, two thirds had a diagnosed mental health disorder, 50% had a history of self-harm and 50% a record of special needs⁷³. Other snapshots of the population of Woodlands have shown large numbers involved in poly drug misuse prior to admission. Mental health was also one of the concerns raised by young people, particularly amongst those living in disadvantaged communities where suicide and self harm were mentioned as regular features of young people's lives.

Woodlands seems to be well resourced with respect to mental health concerns. As we have already noted, it has a number of full time mental health nurses, a full-time forensic psychologist and a

⁷² DHSSPS Regional Guidance for Residential Care and Field Social Work Staff on Supporting Looked after Children who are arrested/ questioned by Police or Appear in Court on Criminal Matters. See also: HSCB and PSNI Regional Guidance: Police Involvement in Residential Units and Safeguarding of Children Missing from Home and Foster Care.

⁷³ CJINI (2008). *Inspection of Woodlands Juvenile Justice Centre*.

part-time consultant child and adolescent psychiatrist. But while provision within the JJC is good, its effectiveness is reduced when provided in isolation from preventative intervention, limited provision at Lakewood (the secure care facility) and continuity of provision post-release or after an offender's 18th birthday. The RQIA report into CAHMS⁷⁴ published earlier this year concluded that, in the absence of a strategic framework, services across Northern Ireland would remain patchy and undeveloped.

Following the publication of the Bamford Review of Mental Health and Learning Disability in 2009, an Action Plan was developed to take forward its recommendations, including those relating to children and young people. It identified a need for more fully developed community and specialist services. Since then, a 33 bedded unit has replaced a 6 bedded unit and there has been an increase in the number of psychiatric practitioners. However, little priority has been given to improving responses to behavioural problems or conduct disorders, which appear to be largely understood as a problem for schools and education psychology services. As with many other areas of policy and practice, children's mental health issues have been addressed in a fragmented way across criminal justice, care, mental health and education rather than through a single, joined-up strategy.

3.12.3 Other special groups

There are many other groups who tend to be over-represented in the criminal justice system, raising issues about compliance with the non-discrimination principle set out in article 2 of the UNCRC. In many countries, those of a particular race or ethnicity are particularly vulnerable to over-representation, but we did not find this in Northern Ireland. Similarly, we found no evidence that either Protestants or Catholics were disproportionately targeted. This, we feel, owes much to the improvements in policing to which we have already alluded. This is not to say, however, that young people's perceptions have changed in line with these improvements – young people living in both Protestant and Catholic communities perceived the police as either still biased against them (Catholics) or as unfairly over-targeting them for fear of entering Catholic communities (Protestants). Significantly, young people who had been involved with the police on projects working across sectarian lines did not share the view that the police were biased against one community or another.

Young people heavily involved in drug and alcohol misuse are also commonly caught up in the criminal justice system and over-represented in custody. In Northern Ireland, we felt that drug misuse among young people was less of a problem (although probably worsening) than alcohol misuse. Alcohol use often seems to be related to offending behaviour – in 38% of the youth

⁷⁴ RQIA (2011). *Independent Review of Child and Adolescent Mental Health Services (CAHMS) in Northern Ireland*.

conference cases we looked at alcohol played a part. Although aware of the problem of alcohol misuse, we didn't get the impression that agencies considered it to be a priority.

Many young people who end up in the criminal justice system and particularly in custody have low levels of educational attainment and poor records of school attendance⁷⁵. A smaller, but equally significant number have special educational needs, including those with speech and language or learning difficulties. We spoke to some young people with learning disabilities, who told us that most police struggled to understand their problems or how to respond to them. Parents too felt that criminal justice agencies had little understanding of their children's conditions, particularly their difficulty in comprehending the impact of their behaviour on others. They felt unsupported by local services and concerned that too often their child's needs weren't identified until they got into serious trouble.

We met with a group of gay, lesbian, bisexual and transsexual young people, who tended to report similar experiences to other young people in their general contact with the criminal justice system, but better experiences than most when their contact related to LGBT issues. We had some limited contact with the Travelling community through a meeting with a group of children, most of whom were quite young. We are aware of research indicating some of the tensions between the travelling community and the police but received no particular representations about youth justice.⁷⁶

3.12.4 Conclusion

Our overall impression is that for many of these groups, the problems and challenges they face are similar to those faced by other young offenders, but compounded by their specific circumstances. Over the past two years much attention has been given to improving practice with looked after children at risk of offending or custody. As a result changes have been introduced and there have been a number of improvements in services and how agencies respond. Similar attention now needs to be paid to the risks faced by children with mental health or substance misuse problems and appropriate measures put in place to minimise them.

⁷⁵ See, for example: Prison Reform Trust (2009). *'Seen and Heard; supporting vulnerable children in the youth justice system'*.

⁷⁶ Jarman, N. (2011). *Over Policed and Under protected: Travellers, the Police and the Criminal Justice System in Northern Ireland.*, Institute for Conflict Research.

We therefore recommend that:

- 22. All agencies working with children and young people should improve their understanding of special needs and the impact these have on those specific groups over-represented in the youth justice system and in custody. The DHSSPS should lead in developing better assessment, inter-agency information exchange and cross-referral mechanisms alongside more specialised interventions.**

Chapter 4: Strategic and Practical Arrangements for Effective Delivery

This chapter is divided into three main sections. The first looks at the overarching strategy across government for developing and delivering services to children and young people in Northern Ireland. The second looks at the more specific strategic and practical arrangements relating to youth justice while the third sets out the case for introducing multi-agency teams at the local level.

4.1 Children's Services and the 10 Year Children's Strategy

It is only just over a decade ago that the Good Friday Agreement was signed and much progress has been made in constructing the new government arrangements. We have observed the considerable attention and energy that has been directed into creating extensive strategic arrangements across government as well as within the criminal justice system. These have led to some constructive changes, particularly further down the delivery chain which, in terms of improving the lives of children and young people, we feel can only help. Two examples are worth citing here.

The first is the clear benefits we believe will be had from the recent restructuring of the mosaic of social services provision into a single Regional Board, commissioning services through a smaller number of local Trusts. This re-structuring should provide the opportunity to plan and commission services on a much more efficient, consistent and coherent basis through the establishment of the Children and Young People's Strategic Partnership (CYPSP). We say more about this later.

The second is the welcome commitment between agencies involved with children to work in partnership in meeting particular challenges which spread across organisational boundaries. We have come across a number of examples of good and effective partnership-working in support of children, young people and their families in areas such as public health, social care, community safety and local policing.

However, at a strategic level, it has been equally evident to us that although the 10 year Children's Strategy reads well as a document, it appears to have little relevance to the real world. The implementation arrangements associated with it appear to lack bite, accountability and buy-in from all the constituent Departments. As a result, it is difficult to determine, five years in, what the Strategy has achieved in practice.

We were impressed by the statement made in the Assembly in January 2001 by the then First Minister, David Trimble.⁷⁷ In announcing the establishment of an independent commissioner for children for Northern Ireland and a Children's Strategy, he reflected a common cause among politicians to create a better future for children stating that 'we must act now to ensure that children can grow and develop in an environment where their rights are upheld, their safety secured and their needs met'. The Children's Strategy was an exemplary commitment that was also welcomed by the UN Committee on the Rights of the Child⁷⁸. But over the years, and with other priorities crowding in, its energy seems to have dissipated. There is a clear need to re-energise and re-launch the Strategy, to make it more relevant and give it greater focus.

We feel this is especially important for a number of reasons. In the coming years, Northern Ireland, along with other regions, will see a sustained reduction in its public service budget. If it is to ensure that whatever resources are available are spent to the best effect and on the young people and their families who really need it, then there needs to be a clear and strategic plan of action across all the relevant Departments. It appears to us that the appropriate mechanism to achieve this is the Programme for Government, which allows Ministers to establish shared priorities around early and universal support for children and families and to direct resources accordingly. Political responsibility needs to be located at the right level to ensure that policy on future generations is and remains a top priority. Without this shared focus, real and sustainable progress will be difficult to deliver; children and their families need a more powerful and influential political voice to achieve change.

To this end, and given the importance of children to Northern Ireland's future, we do think that the Executive should establish a refocused Ministerial Committee comprising those Ministers with substantial responsibility for children and young people. We suggest that the membership of the Committee should be the Ministers for Education, Health and Social Services, Social Development and Justice. It will be a matter for the First and deputy First Minister whether they, or one of the Ministers, should chair this Committee.

This would be consistent with the UNCRC requirement to promote a unifying, comprehensive and rights-based national strategy. It states that signatories to the Convention should ensure that such a strategy is endorsed at the highest level of government, is linked to national development planning and included in national budgeting. The Convention is particularly concerned to ensure that the strategy does not fall outside key decision-making processes.⁷⁹

77 Hansard: Northern Ireland Assembly 29 January 2010. www.niassembly.gov.uk/record/reports/010129b.htm#7

78 UN Committee on the Rights of the Child Concluding Observations on the UK 2008.

79 UN Committee on the Rights of the Child's General Comment No. 5 (2003) on General Measures of Implementation.

We also believe that this arrangement would bridge the gap between the national strategic level and that at which services are commissioned (i.e. the regional or local). The emergence of this gap has allowed a significant expansion of a “bottom-up approach” to the development of services, but all too often they comprise very good but short term projects funded from a variety of sources. This makes them vulnerable to budget cuts and the absence of effective co-ordination and cohesion limits the extent to which young people and their families can access or benefit from the services they need. We are not suggesting that this effort, often driven by local energy and initiative, is bad or wasted but it is potentially wasteful of the finite resources that are available.

There is therefore an evident need for greater co-ordination and coherence in the planning, commissioning and delivery of services. We believe, and many others share this view, that the CYPSP has the potential to fulfil this role. With its broadly based membership and direct involvement of Chief Executives of the respective organisations, the Partnership is ideally placed to accept and deliver on a mandate from Government to focus resources on where they will make the biggest difference. Care will need to be taken to ensure that these arrangements do not add more bureaucracy and that they deliver real and tangible benefits on the ground.

4.2 Youth Justice

In relation to the criminal justice system, there are clearly well developed strategic planning arrangements overall. The current strategic structure is however relatively new as the Ministerial-led Criminal Justice Delivery Group was only established in the latter part of 2010. Its relationship with the longer-standing Criminal Justice Board is not immediately clear to us, but what does seem evident is that neither group has yet developed a clear focus around children and offending.

We strongly believe that youth justice should be regarded as a key strategic priority on which the Delivery Group in particular should have a clear focus, as has been emphasised in relation to the issue of delay. Research⁸⁰ tells us that the earlier children offend, the more likely they are to re-offend; that the peak age of onset of offending is 15; and that the likely onset of offending in adulthood is relatively low. The logical conclusion to be drawn from this is that efforts to prevent young people from continuing their offending into adulthood should take precedence. In reality however, with the exception of the Youth Justice Agency, all of the other agencies are primarily concerned with the adult criminal justice system. While they make some provision for children and young people, it is the adult group which engages most of their energy.

80 Bowles, R and Pradipto, R (2005). *Young Adults in the Criminal Justice System: Cost and Benefit Considerations*. Barrow Cadbury Foundation.

We have formed the impression that too often policy decisions taken in relation to adults in the criminal justice system are simply extended with little thought to those under the age of 18. This is illustrated by the absence of a significant place for children in the strategic plans of individual organisations within the justice system, as highlighted earlier in relation to policing. Equally telling is the delegation of issues around children and young people to a subgroup of the Criminal Justice Board and the Youth Justice Agency rather than them being considered at full Board level. The low priority accorded to children and young people in general and youth justice issues in particular is, in our view, at risk of persisting as resources are squeezed. This can only become more problematic once the demographic impact of a spike in births between 2004 and 2008⁸¹ feeds into the criminal justice system.

This strategic view needs to prioritise the role of the criminal justice system in relation to children and young people who have offended, particularly in relation to delay and local policing. The criminal justice system and the children's system need to develop a more prominent and better resourced strategy for early intervention and prevention.

Below the strategic level, the definition of roles and the overlap between the functions of the PBNI and the YJA, the two organisations responsible for managing and supervising young offenders, has been raised as an issue with us. It has been suggested to us that the YJA should take responsibility for all youth orders and supervision currently within the ambit of PBNI. While we can see that there could be some scope for confusion at the interface between these two organisations, to achieve this might well mean significant upheaval in the community sentencing arrangements for children, the development of new court disposals and the need for additional resources.

We have not reached a position on the nature and scope of any difficulties this overlap creates and have therefore not come to a firm view on this issue. While we see no compelling reason to change the existing arrangements, this may be something that the Criminal Justice Inspection team could look at further. In the meantime, the PBNI and the YJA should continue, as at present, to work closely together and to combine their collective expertise in dealing with children common to both organisations.

Having met on three occasions with the Chief Inspector of Criminal Justice and his staff and read some of the reports they have produced, we feel that Northern Ireland is indeed fortunate to have a single, fully integrated CJS-wide Inspectorate. Its capacity to look across the system, working with other public service inspectorates as appropriate, provides important independent but crucially joined-up insight into how the system is working. We regard this as invaluable.

81 Live Births 1887-2009 http://www.nisra.gov.uk/archive/demography/vital/births/live_births1887-2009.xls

4.3 Better data

We are also pleased to note that the launch of the new Causeway Programme, which will now facilitate the instant electronic sharing of case data between criminal justice agencies and remove much of the cumbersome, paper-based arrangements that existed beforehand. We are optimistic that it will prove invaluable in, for example, monitoring case progression, tackling avoidable delay and improving the efficient and effective delivery of justice.

There does however still seem to be an issue in relation to the availability of reliable, consistent statistical data on youth crime and youth justice in Northern Ireland. We regard this as a significant strategic and practical weakness. Without this information it will be almost impossible to determine the effectiveness of the system in the future. While recent attempts to produce outcome measures based on re-offending data are important, they cannot be used to compare the effectiveness of different disposals.⁸²

This lack of data, especially benchmarks against which improvements over time could be measured and robust evaluations of specific interventions, has also been unhelpful in completing our work. We have also come across some unhelpful data inconsistencies, for example in relation to youth conference victim participation rates or the number of “no prosecutions” directed. Thus in the latter case for example, the PPS figures for 2010 show just under 3,000 young people whereas the PSNI official Crime Statistics for 2010/11 show just 3 in total.

The fact that good data is either not available or not shared across and between organisations constitutes a real obstacle to a dynamic understanding of the system. Currently, individual agencies collect and manage data for their own business-specific purposes, but there are no common definitions or data standards across the system. Equally, there is little robust evidence on what is working and what is not in terms of preventing offending and re-offending and virtually no systematic, independent research on specific developments in youth justice.

To briefly summarise, we feel the absence of effective prioritisation of children and young people and leadership at the top is a serious issue. This needs to be addressed if the reforms we are suggesting are to have a chance of improving the lives of the children and victims involved in the criminal justice system and protecting the communities in which they live.

⁸² See footnote 46.

We therefore recommend that:

- 23. The First and deputy First Ministers should reconfirm the Government's commitment to children and young people through the establishment of a Ministerial Committee comprising the Ministers of Education, Health and Social Services, Social Development and Justice as its core members. Its overarching aim should be to promote social inclusion, prevent offending, deliver better outcomes for children and facilitate the transition to adulthood. This Ministerial group should set the strategic direction, rationalise and make more coherent the current strategic planning process and engage other Ministers as necessary.**
- 24. The Children and Young People's Strategic Partnership (CYPSP) should become the strategic, multi-agency forum through which regional and local priorities are agreed.**
- 25. The Criminal Justice Delivery Group should develop a strategic interest in youth justice and, together with the Criminal Justice Board and the Ministerial Children's Committee, take overall responsibility for implementing the recommendations in this report. They should also address, as a matter of urgency, the paucity of high quality statistical data and research across and beyond the criminal justice system.**

4.4 Local delivery

Given the size of Northern Ireland, we think there could be a unified model of professional practice for meeting the needs of children and reducing their offending. We have noted the potential for the Children and Young People's Strategic Partnership (CYPSP) to play a significant role in overseeing the commissioning and delivery of services. But to maximise the chances of reducing the frequency and seriousness of youth offending and ensuring that all children and young people have the greatest chance of being socially included, we believe that both universal and targeted services should be delivered by multi-agency teams with the child placed at the centre and using evidence-based practice.

A good source for developing such an approach in Northern Ireland is readily available (see, for example, the review of what works in preventing and reducing offending published in 2008).⁸³ It would adopt a fully integrated approach to supporting families, investing in pre-school education, developing holistic preventive interventions such as multi-systemic therapy, building individual resilience, supporting the transition to adulthood, fostering desistance from offending and encouraging positive relationships.

⁸³ NIO (2008). *Reducing Offending: A Critical Review of the International Research Evidence* NIO Research and Statistical Series No. 18. CJSNI.

We have debated the pros and cons of whether this approach should be enshrined in statute as a Duty to Co-operate. On balance, based on experience elsewhere, we are not sure that simply legislating for co-operation delivers the desired outcome. Hence we think that this could be encouraged on a non-statutory co-operative basis, but it should be carefully monitored and reviewed to determine whether legislation might be necessary at some future stage.

We therefore recommend that:

- 26. The Ministerial Committee and the CYPSP should take the lead in developing a multi-disciplinary model of practice for children in need and oversee its implementation across Northern Ireland. Once developed and agreed, consideration should be given to putting these arrangements on a statutory footing.***

4.5 Youth work

We have been impressed at the outstanding work being done in the community by dedicated youth workers and volunteers in both the statutory and voluntary sectors. Often it is only these workers who have the skill and persistence, and the relationships with young people, to engage the most hard to reach. Many of those working with young people were themselves involved in or on the fringes of criminality in their youth and want to 'pay back' by volunteering for the help they received.

In our discussions with young people and families, they have told us how they have been motivated and inspired by the commitment of these youth workers whose approach they describe as supportive, non-judgemental and caring. They also told us that the system would work far better if there were more youth workers, and if other professionals adopted the same approach and way of working that they employ. We were also impressed with the way youth workers spoke to and engaged with young people. They were respectful and friendly but also checked and challenged bad behaviour and carried their authority well. It was clear that the young people looked to these youth workers for approval and modified their behaviour when asked to do so by them.

Youth work, especially 'detached' youth work, is by its very nature unsuited to formal measures of effectiveness and the absence of crime or anti-social behaviour is almost impossible to measure. This, coupled with its non-statutory status, makes it vulnerable to funding cuts. As a Review Team we are concerned about this. In our view, a significantly greater investment of time, resources and personnel in this important and challenging role is warranted. As we have seen here in Northern Ireland, voluntary youth and community services can draw in support from volunteers, parents and the local community, engaging people in ways the statutory sector is unable to do. It can

mediate between young people and law enforcement agencies and build support for the rule of law. It can offer opportunities for young people to see beyond the horizon of their immediate environment and nurture aspiration and opportunity. It also connects with the most isolated, disadvantaged and hard to reach young people who will not engage with statutory organisations. Most of all, the youth workers we saw (paid and unpaid) provided good role models, especially for boys, that were sadly so often lacking in their own communities. Other agencies could benefit more from drawing on their skills in engaging with often the most difficult young people to reach.

We therefore recommend that:

- 27. The success of youth and community work in Northern Ireland should be built on by providing additional resources to support its expansion, allowing other agencies to draw on the skills and expertise of youth and community workers in engaging young people, especially those who offend.***

Chapter 5: Children's Rights and International Standards

5.1 Introduction

Our terms of reference (see chapter 1), reflecting the Hillsborough Castle Agreement, require us to have regard to international obligations in the area of youth justice. Throughout this report, we have therefore made reference to children's rights where relevant and important. So for example we have referred to Articles 3, 37 and 40 of the UN Convention on the Rights of the Child in relation to prosecution, detention and youth conferencing and drawn attention to Articles 5 and 6 of the European Convention on Human Rights in relation to custodial remands and the problem of delay. In this chapter, we look more specifically at the rights framework in relation to the youth justice system.

We are grateful to those individuals and agencies that drew our attention to the international standards relevant to our task, which we have considered in some depth. We are in particular aware of the need to take account of the European Convention on Human Rights (ECHR) since its incorporation into domestic law by the Human Rights Act 1998 and the Concluding Observations in 2008 of the UN Committee on the Rights of the Child on the UK's progress in implementing the UNCRC.

5.2 Human rights in Northern Ireland

Human rights clearly constitute an important cornerstone of the peace treaty. Coming from outside, we were impressed by the extent to which there is a clear understanding of the importance of respecting and promoting the rights and interests of every citizen. We have already commented on the significance of placing human rights at the heart of the transformation of policing in Northern Ireland. The Criminal Justice Review also makes extensive references to human rights and international obligations. And to this we should add the setting up of the NI Commissioner for Children and Young People, with whom we have met.

We are also impressed by the extent to which the voluntary sector articulates this agenda in relation to children, with reference in particular to international obligations. It is through their efforts that issues affecting often very vulnerable children have been brought to the fore, in particular their right to be consulted and to participate, as enshrined in Article 12 of the UN Convention. In this regard, they have used the powerful equality provisions in Section 75 of the Northern Ireland Act 1998 to encourage public authorities to take account of the impact of their policies on the lives of children and young people.

5.3 Bill of Rights

We have seen the Northern Ireland Human Rights Commission report to Government on the need for a Bill of Rights for Northern Ireland, along with the Government's response to it. We were however surprised to see no section in the Government's response dedicated to the rights of children in Northern Ireland. In 2008, the UNCRC recommended just such a special section in its Concluding Observations on the UK's compliance. While we accept that most aspects of childhood are not unique to this jurisdiction, there are nevertheless clear differences for children here compared to those in the rest of the UK. These include the level of violence directed at children by paramilitaries and the fact that they are growing up in a society in transition. And while we accept that children and others are already protected from violence by the law, we believe the Northern Ireland context adds a different dimension from what pertains elsewhere in the UK and requires special consideration.

5.4 Rights and the youth justice system

Our main concern, given our terms of reference, is to consider the extent to which legislation, policy and practice in relation to youth justice reflects international standards and best practice. From the many discussions we have had, it is clear to us that there is concern as to whether this is the case in relation to Article 3 of the UN Convention on the best interests of the child. We have also made reference to this ourselves. While the aims of the youth justice system (see Chapter 2) do include the welfare of the child, it is not part of the principal aim. Article 3 of the UNCRC states that the welfare of the child should be reflected in legislation as a principal aim.⁸⁴

When the new aims of the youth justice system were agreed in legislation in 2002, it was felt these aims represented a significant improvement. It was argued however that incorporating the best interests of the child might derogate from the rights and interests of others, including victims. We found that in those cases where the best interests of the child were relegated, for example in delay or in processing children unnecessarily through the youth justice system, the interests of victims and communities were also relegated. Furthermore, children who offend and children who are victims of crime are often the same children⁸⁵ and preventing further offending, which is part of the principal aim, is most likely to be achieved by meeting the best interests of the child. In our view therefore, we see no reason why Section 53 should not be amended to reflect the best interest principles espoused in Article 3 of the UN Convention.

⁸⁴ This was expressed as a concern in the UN Committee's 2008 Concluding Observations on the UK.

⁸⁵ See for example: Aye-Maung, N. (1995) *Young people, victimisation and the police: British Crime Survey findings on experiences and attitudes of 12-15 year olds*. Home Office Research Study, No. 140. London: HMSO.

We therefore recommend that:

- 28. *Section 53 of the Justice (NI) Act 2002 (the aims of the youth justice system) should be amended to fully reflect the best interest principles as espoused in Article 3 of the UN Convention.***

5.5 Incorporation of the UNCRC

We have further considered whether to recommend full incorporation of the UNCRC into Northern Ireland legislation, as recently occurred in Wales.⁸⁶ On balance, while we see some merit in moving in this direction, and while we acknowledge its significance for youth justice, we do not regard a review of the youth justice system as the appropriate driver, given that the Convention extends into issues that go much wider. It may however be useful for the NI Executive to explore this matter further with their colleagues in Wales.

5.6 The age of criminal responsibility

5.6.1 Introduction

We recognise that the issue of at what minimum age a child should be held criminally liable for their behaviour is a matter of considerable public interest in Northern Ireland and indeed elsewhere. It is a sensitive and controversial issue on which people's views are often quite polarised. We have thought carefully about this issue and how our review might best contribute to it. We set out our thinking below.

5.6.2 The current situation

In Northern Ireland, the minimum age of criminal responsibility (MACR) is 10; below this age, children cannot be held criminally liable for their actions. With the exception of England and Wales, this is the lowest age in the UK. In Scotland, which has a very different approach to dealing with youth crime, the official age of prosecution was recently raised from 8 to 12. In the Republic of Ireland, the MACR has recently been raised to 12 for all but the most serious offences. In New Zealand, which is the restorative justice model on which Northern Ireland is based, the age of criminal responsibility is 10. In other countries, the MACR is generally higher than this and in a small number official claims may be different from what happens in practice.⁸⁷

⁸⁶ Rights of Children and Young Persons (Wales) Measure 2011.

⁸⁷ Cipriani, D. (2009). *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*.

5.6.3 Children's accountability for wrong-doing

As part of the process of growing up, children have a right to discipline; they need to learn what behaviour is acceptable and what is not; they need to discover what happens when they break the rules; and they need to understand and learn about how their behaviour affects others. Helping children to do this is primarily the responsibility of parents.

When a child engages in wrongdoing, it can have implications for the child's development, their family life, the peace of the community and the welfare of any direct victims of the child's behaviour. It is clearly not in their interests to allow them to grow up in an environment that sets no boundaries or envisages no consequences for wrongdoing.⁸⁸ Good parents will ensure their child learns to tell right from wrong and to act respectfully towards other people and the law.

Earlier in our report we reported the unanimously held view that children's misdemeanours were a normal part of growing up and that parents should take responsibility for exercising effective discipline and putting matters right between the child and the victim. Where they are either unwilling or unable to do so – and people were concerned that certain children in their neighbourhood didn't know the difference between right and wrong or were allowed to 'run wild' – they should receive the help and support they needed. This was considered particularly necessary where parents failed to understand or acknowledge how serious their child's behaviour is perceived by others in their community. They were concerned however that the criminal justice system was taking over matters which they felt should be dealt with by parents, a view also expressed by the police and other criminal justice agencies.

We have already referred to the degree to which the criminal justice system is designed by adults for adults. And we have pointed out why it is important to have a separate system for dealing with children, with parents empowered to deal with most minor matters. Unlike children, adults are subject to no authority but the state, so the state steps in to hold them accountable for their actions. But a state that steps in too early or too readily to exercise its (considerable) authority risks undermining the duty of parents (and other responsible adults) to exercise such authority themselves. The precise age at which parental authority should secede to that of the state is however highly contested.

⁸⁸ UN Committee on the Rights of the Child (2007). *General Comment on Juvenile Justice*, para 11: "it goes without saying that delinquency has a very negative impact on the child's development."

5.6.4 What should the MACR be?

There is no definitive answer to what the age of criminal responsibility should be. Children and young people can vary enormously in terms of their development. Some are more mature, better able to make reasoned judgements and more able to comprehend than others. Chronological age can only ever be an approximate guide to whether a child should be held fully accountable for their actions. Furthermore, minimum ages of criminal responsibility will vary depending on the kind of youth justice and social care systems in place in different countries. This all helps to explain why the ages of criminal responsibility vary so widely - from 7 to 18 - and why all the international bodies that have considered this issue have been reluctant to specify a specific age.

The UNCRC recommends that States should set a minimum age, but does not specify what that should be. Article 40.3 of the UNCRC requires *“the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”* Other international documents comment on the extent of culpability to be attributed to children, but also draw back from setting a precise age. In 2003, the Committee of Ministers of the Council of Europe recommended that *“Culpability should better reflect the age and maturity of the offender, and be more in step with the offender’s stage of development, with criminal measures being progressively applied as individual responsibility increases.”* In 2007, the UN Committee on the Rights of the Child took a similar line:

“Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law.”

It does however conclude that a minimum age of criminal responsibility below the age of 12 years is not internationally acceptable, and States with an MACR below this should increase it to at least 12, but preferably higher than this.

Research doesn’t take one much nearer to a resolution, although work on brain development during adolescence and the early adult years does support the view that children and young people should be treated differently from adults in criminal matters.⁸⁹

89 Sowell, E et al., (2001). *Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: inverse relationships during postadolescent brain maturation*, 21 Journal of Neuroscience 22;

Spear, L. (2003) “Neurodevelopment During Adolescence,” *Neurodevelopmental Mechanisms in Psychopathology*, Cambridge University Press, Nov. 2003.

There is some evidence to suggest that those under the age of 12 are unlikely to be able to fully participate in a trial⁹⁰ while other research shows at least that countries with higher MACRs do not experience higher rates of youth offending.⁹¹ What is quite apparent however is that in raising the age to 12, the numbers affected would be small.

Table 9 shows how many children would be kept out of the criminal justice system by an increase of the MACR and the proportion of all young offenders that represents. The figures are cumulative (so, for example, the 14.48 in row 2 includes the 2.67 in row 1).

Table 9: Effect of raising the age of criminal responsibility

MACR Age	% of offenders removed from CJS	Total number removed from CJS	Number removed from court
12	2.67	143	27
14	14.48	775	169
16	43.38	2590	863
18	100.00	5354	2298

Source: PSNI Juvenile Database 2009

Note: excludes those cases where “No Prosecution” was directed.

5.6.5 The Northern Ireland context

The MACR was considered by the Criminal Justice Review in 2000, which referred to the UNCRC and other international instruments. It noted, at that time,⁹² that no precise guidance had been issued on what age was appropriate, but felt that 10-13 year old children should continue to be criminally responsible for their actions, although the means of doing so need not necessarily be the same as for older children. It did however state that those under the age of 14 should not be held in custody and that they should be diverted from prosecution unless they were persistent, serious or violent offenders.⁹³

We learned that the Criminal Justice Review’s conclusions had informed a statement in 2008 from the Office of First Minister and deputy First Minister, which said: *“We regard the present age of criminal responsibility of 10 as appropriate and have no plans to raise it. The comprehensive review of the criminal justice system in Northern Ireland which flowed from the Belfast Agreement considered the matter and did not recommend that the age should be increased.”*⁹⁴ Since then, the UN Committee has produced firmer guidance on the matter.

90 Cipriani, pp.145-6: “Preliminary research on US children and standards suggests that the range of 11 – 13 years is critical for developing the abilities necessary for trial participation, and that it may be improbable that for children 12 and younger to have these abilities.”

91 Paper by Michele Burman prepared for the Review team: *International Approaches to the Age of Criminal Responsibility*.

92 This statement predated the 2007 General Comment of the UN Committee.

93 Review of the Criminal Justice System in Northern Ireland (March 2000), para. 10.69.

94 OFMDFM: *Northern Ireland Report to the United Nations Committee on the Rights of the Child (2007)*. Belfast.

The issue has also been considered in the context of proposals for a Bill of Rights for Northern Ireland, but again no specific minimum age was put forward. The Bill of Rights Forum did however reach a number of important conclusions, including:

- i. Public authorities shall ensure that children are held responsible for any infringement of the law in a manner appropriate to the age, understanding and maturity of the child.
- ii. The age of criminal responsibility shall be raised in line with international human rights standards and best practice.
- iii. Public authorities shall provide a range of procedural options as alternatives to the criminalisation of children, including family based support and community based diversion, which is in the child's best interests. They shall ensure that all programmes or initiatives are effectively regulated and monitored to protect the child.

In the course of our own work, we found that the views expressed mirrored both support and opposition to raising the MACR. Groups working for the rights of children and young people wanted the age raised. Include Youth, for example, argued:

"At 10, the age of criminal responsibility for children in Northern Ireland is lower than in most advanced democratic jurisdictions, and significantly lower than the age at which children can legally assume other responsibilities. For example, the age of sexual consent is 16, the voting age is 18. Children are judged as unable to buy cigarettes or serve on juries until 18; drive until 17; leave school or live independently until 16. The age of criminal responsibility sits incongruously alongside these other developmental milestones which, in essence, bestow varying degrees of moral and social responsibility to a young person."

The Probation Board for Northern Ireland (PBNI) also suggested that the age be raised to a minimum of 12 years and preferably to 14. The Parenting Forum NI has also showed support for raising the age to 14 as did a group from a District Policing Partnership who met with us. Two District Judges were confident that, if the age was raised to 14, they would be able to find a non-penal way to deal with children below that age. A group of young disabled people voted 5 to 3 in favour of raising the age.

But there was also opposition to the proposal. One adult we met at a community consultation expressed concern that, if the age was raised, there was *"a danger of it being another let-out clause for boys who know how to work the system."* Another person was worried that some people would *"send out wee kids with rocks because they know they will be dealt with differently."*

Some people we met were ambivalent. Concerns were largely around the feelings of communities, especially those hard-pressed by bad behaviour. They would need to be reassured. Victims would be more amenable, they felt, if they knew that whatever action was taken it would be that which would most likely prevent further crime. A group of young people, who saw both sides of the argument, felt that there had to be some consequences for offending behaviour, but not necessarily criminal consequences.

5.6.6 A possible way forward

We are aware of the great sensitivity of this issue. The debate seems to be highly polarised and often emotive. Our own view is that children do have varying degrees of culpability based not just on age but also their stage of development and experience and that communities are best protected by the most effective response to problematic behaviour by children, which in most instances will not be a criminal justice or penal response. On the other hand, it is not our view that children aged 10 and over cannot tell the difference between right and wrong or should have no responsibility for their actions. The key question is not *whether* children should be held accountable, but *how* that should be accomplished to maximise effect.

But whatever our own views may be, there are a number of quite compelling reasons to justify raising the MACR. We know that younger children tend to be more vulnerable and mostly less culpable than their older peers; we know that raising the age will help to reinforce parental responsibility and release some modest resources within the youth justice system for tackling delay; and we know that raising the minimum age would reflect the spirit and the letter of international treaties. Additionally, we know that victims are more interested in preventing what happened to them from happening again than anything else and that there are better ways of achieving this than referring children to the youth justice system.

To be true to the principle that children should be held appropriately accountable, one would need to develop a framework within which that can happen. We believe that the components of that framework already exist, but they need to be reconfigured to ensure there is a clear pathway and clear options for dealing appropriately with each child. This should involve:

- i. A clear understanding of the circumstances in which it is expected that a child's misbehaviour will be dealt with by parents;
- ii. A process for identifying cases where parents are unwilling or unable to exercise their responsibilities to respond appropriately to a child's offending behaviour;

- iii. The development of local capacity to support and improve family and community-based responses, drawing on universal services provided by education, health and social services, but also reinforcing the already extensive use of restorative interventions, such as Family Group Conferencing and CBRJ;
- iv. Providing greater access to diversionary youth conferences for appropriate cases but with no criminal implications.

Taking account of all the views and evidence at our disposal, we have concluded that the minimum age should be increased to 12 forthwith and, following a period of review and preparation, perhaps to 14, which has some historical and current significance for criminal law in Northern Ireland. It will be important however to reassure the public that what is proposed will support the children, families and the communities in which they live.

We therefore recommend that:

- 29. The minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14.***
- 30. We further recommend that, in the intervening period, appropriate local services and programmes should be developed to meet the needs of children and young people who would otherwise have entered the criminal justice system.***

5.7 Equality issues

We have already noted the existing powerful equality provisions in Section 75 of the Northern Ireland Act 1998 and that there is a specific category relating to age. We think however that public authorities need to be reminded of their specific duty to consider the impact of their policies on children and young people as a defined group and as represented across the other groups.

We therefore recommend that:

- 31. The NI Executive should make it clear to all public authorities that the “age” category in Section 75 of the Northern Ireland Act 1998 requires them to consider how their policies and practices impact on children and young people.***

Chapter 6: Conclusion

As we said in the Foreword to our report, being invited to carry out this review has been a great privilege. We have met and talked to a large number of people about a wide range of issues and learnt much in the process. We have been received with great courtesy and been wholly supported in our task throughout by dedicated people who all have one thing in common: to improve the lives of children and young people in Northern Ireland and make the peace treaty a success.

As stated at the beginning of this report, we started our work from a good position – one where we could build on what was already working well: a strong and vibrant voluntary and community sector; a real commitment to human rights and international obligations; the creation of new policing arrangements that have the confidence of the public; the embedding of restorative practices at the heart of the youth justice system; the creation of a state-of-the-art Juvenile Justice Centre of international repute; and, last but not least, a highly skilled workforce dedicated to improving the lives of those affected by youth crime and those caught up in the criminal justice system.

But we also found areas where improvements were needed, sometimes on quite a radical scale. The delay that permeates the entire criminal justice system and the failure of virtually every effort over the years to address this issue is far and away the most urgent challenge we identified. Many of the recommendations we make, not least those which address the issue of delay head-on, are intended to help unlock this problem. Tackling delay is paramount because it impacts on everything else the system is trying to achieve. It increases the risk of re-offending; it constitutes profligacy in a period of financial uncertainty; it breaches human rights; and, ultimately, represents a failure by the State to deliver justice for victims and offenders.

Ensuring only the most persistent and serious young offenders enter the youth justice system will free up resources for speeding up the process. Raising the minimum age of criminal responsibility and giving parents more responsibility to discipline their own children will do the same. Making sure children on bail are not set up to fail will help stop the revolving door into custody, lighten court caseloads and contribute to reducing delay. But above all, we firmly believe that only by introducing statutory time limits that apply right across the system – from arrest to sentence/disposal – will the step change that's needed be achieved. Unless required by law to co-operate, we cannot see how else full agency collaboration – a necessary but not sufficient condition for success – will be secured.

Along with the Prisons Review Team, we were concerned that despite the recent opening of Woodlands Juvenile Justice Centre, children under the age of 18 are still being held in an adult prison establishment. We, like them, have recommended this should end and places will need to be made available in Woodlands to ensure this. This, in turn, can be achieved by removing those young people currently in Woodlands who shouldn't be, particularly those admitted under PACE and those remanded for sometimes inordinately lengthy periods of time. Woodlands needs to change from being a remand centre to being what it was meant to be – a facility for young offenders sentenced to custody.

We were concerned by the extent to which one of the cornerstones of children's rights - the best interests of the child – is subjugated to other (often more powerful) interests. To address this, we have strongly advised that the principal aim of the youth justice system should incorporate Article 3 of the UN Convention on the Rights of the Child. But perhaps more importantly, we felt that a more child-friendly and less adult-centric approach to youth justice was required at all levels of the system if the child's best interests are to be truly embedded in legislation, policy and professional practice.

The problem of youth crime cannot be tackled by the youth justice system alone. In line with the best interests of the child, but also taking account of the best research evidence, we have set out a strategic approach to youth crime, underpinned by the principle of proportionality, which first and foremost requires investment in early intervention and prevention. The story of James graphically and convincingly illustrates the moral, social and above all economic imperative for shifting resources away from a reactive and towards a more proactive approach.

Reflecting again both the best interests principles of the UNCRC and the research evidence, we have strongly endorsed the need to avoid formal proceedings where possible by empowering parents, schools and communities to take more responsibility for the (less serious) offending behaviour of their children and young people. There are many ways of responding to such behaviour without recourse to the expensive and not altogether effective criminal justice system, which should be reserved for the most serious and persistent offenders. The latter, also reflecting international obligations, must be dealt with more quickly, more efficiently, more fairly and more effectively.

We have commended the advances that have been made in policing, but more needs to be done. Police officers who interact with young people on the streets must learn that they have a duty to reinforce not just the letter of the law but also its moral authority. Fair, respectful and courteous policing builds trust; trust builds legitimacy; and legitimacy builds compliance. Unfair, disrespectful

and discourteous policing builds anger and resentment, which in turn builds suspicion, opposition and, ultimately, non-compliance. The first prevents crime, the second creates it.

We have also commended the growth of restorative justice, but here too more could be done. There is, we believe, a real place for community-based restorative justice initiatives that give local people greater responsibility for dealing with the behaviour of their own children. There is scope too for improving youth conferencing – by increasing direct victim participation, reducing delay and ensuring, again, greater adherence to the principle of proportionality. And we have commended some of the changes to the Youth Court, but here there is still much to be done to bring it into the 21st century.

So what might Northern Ireland's youth justice system look like if our recommendations are accepted and implemented? We think it would be a much leaner system, with fewer young people at risk of entering it and most young people who offend being promptly dealt with outside it. We think that those who commit persistent or serious offences will have their cases dealt with more quickly and more effectively and that overall young offenders will commit fewer further offences. We think that the rights of victims and those who offend will be better protected, securing higher public confidence in the youth justice system.

Full List of Recommendations

1. As part of a revised and reinvigorated children's strategy (see Chapter 4), the NI Executive should develop an early intervention and prevention strategy, to be delivered locally through the Children and Young People's Strategic Partnership. The strategy should include a set of achievable outcomes and be accompanied by guidance on how agencies and the voluntary sector should work in partnership to deliver it, based on best practice.37
2. The NI Executive should determine how best to secure funding to invest in early intervention and prevention.37
3. To support this shift in resource allocation and investment we recommend that the NI Executive sets up an Early Intervention Unit. This cross cutting, inter-departmental Unit should:.....37
 - a. co-ordinate policy and ensure priority is given to early intervention across all relevant government departments;
 - b. identify and remove barriers to pooled funding and collaborative working;
 - c. disseminate evidence of good practice and co-ordinate research and evaluation on early intervention for 0-13s;
 - d. oversee the development of guidance and standards (and where appropriate accreditation) for early intervention and prevention programmes and initiatives;
 - e. explore further funding options with public, third sector and private sector providers.
4. Police should build on the progress made since the Patten report by:.....42
 - a. raising the priority of children and young people in their planning processes at strategic and local levels;
 - b. modelling best practice in interacting with young people to increase trust and minimise offending;
 - c. developing an appropriate skills package for all officers on engaging with children and young people;
 - d. removing legal obstacles to developing robust and locally-based complaints procedures to help young people raise concerns and using this as a learning tool, while maintaining the right of unimpeded access to the Police Ombudsman.

5. To comply with the new principal aim of the youth justice system (see Recommendation 28), the PPS should incorporate Article 3 of the UN Convention on the Rights of the Child into their Code of Practice forthwith. Further, all professionals working in the youth justice system, including defence solicitors, should receive appropriate training to reflect the new aim.51

6. The aims of the youth justice system should reflect the principle of proportionality and include a presumption that low level offending should be dealt with by parents (with support where necessary), school and communities or through a police disposal. This will require:.....51

- a. the introduction of triage (or similar) at the point of arrest;
- b. building on the successful practices of community based restorative justice schemes;
- c. the extension of police discretion while ensuring adequate safeguards;
- d. greater use of police warnings and cautions for offences that would otherwise have been dealt with through more formal channels.

7. To improve efficiency and reduce delay, we also recommend:52

- a. examining the high proportion of ‘No Prosecution’ cases with a view to removing them from the formal system at an earlier stage;
- b. monitoring the impact of the PPS initiative to process diversionary disposals more speedily;
- c. improving PPS written communications with children and their parents.

8. The development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice, to reduce to an absolute minimum the use of Woodlands as a place of safety under PACE.....54

9. Strict adherence to the statutory presumption of bail supported by:.....58

- a. the provision by the Youth Justice Agency of bail information, support and supervision at the first court appearance, with co-operation from the police and the Public Prosecution Service, where there is a serious risk of a custodial remand;
- b. the application of relevant, proportionate and realistic bail conditions, but only where necessary;
- c. the participation of young people and their parents in the setting of any bail conditions such that they understand and fully accept their implications;
- d. the availability of an appropriate mix of suitable accommodation.

10. The success of the Youth Conferencing approach should be built on by:.....65
 - a. maximising direct victim participation rates;
 - b. ensuring conference outcomes are proportionate and relevant to the offending;
 - c. reducing the time taken from arrest to conference disposal; and
 - d. ensuring coordinators use their discretion to return to court those cases which in their professional judgement would be better dealt with formally.
11. The status and content of the Northern Ireland Courts and Tribunals Service Official Guidelines for Youth Courts should be reviewed and arrangements developed to ensure adherence on a consistent basis.....67
12. All judges, lay magistrates and lawyers working in the Youth Court should be specially trained and accredited to work within a new, single youth court jurisdiction.67
13. Urgent attention needs to be paid to driving down the time taken for all diversionary disposals, in particular diversionary youth conferences, which should be renamed PPS ordered youth conferences. This process should be closely monitored, with the use of appropriate targets, by the Criminal Justice Board.....73
14. Work to tackle the problem of delay should prioritise young offenders. The lessons learnt should then be applied to the adult criminal justice system.....73
15. Statutory time limits should be introduced for all youth justice cases, providing for a maximum period from arrest to disposal of 120 days. This provision, which should include protection for victims from injustice in cases where the time limits are exceeded, should be contained in the next Justice Bill and thereafter implemented within 12 months to ensure all agencies have enough time to prepare. The Criminal Justice Delivery Group and all relevant agencies should find the means to significantly reduce the time taken in advance of the legislation. The Criminal Justice Delivery Group, together with the Judiciary, should oversee and be held to account for delivering the time limits.73

- 16. The practice of allowing the courts to send persons under the age of 18 to Hydebank Wood Young Offenders' Centre should cease. Arrangements should be put in place to manage their transition to Woodlands Juvenile Justice Centre no later than 18 months from the publication of this report. As part of this, suitable options for accommodating a very small number of dangerous young offenders will need to be explored.78
- 17. Young people who attain the age of 18 while in custody should have their place of detention determined by an assessment of their circumstances, paying particular attention to their needs and best interests.78
- 18. The practice of using the Juvenile Justice Centre as a place of safety for PACE procedures for any child should be reduced to an absolute minimum through the measures outlined in this report (recommendations 8, 9 and 19). The number of PACE places in Woodlands JJC should be limited to one or two.78
- 19. Looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population.78
- 20. Greater priority should be accorded to the rehabilitation and re-integration of young offenders in custody. They should be prepared for release from the outset through, for example, day release for the purpose of education, training or employment and should have continuing access to support on a multi-agency basis.85
- 21. Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness. Specific actions should include:85
 - a. diversionary disposals should not attract a criminal record or be subject to employer disclosure;
 - b. young offenders should be allowed to apply for a clean slate at age 18;
 - c. for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed.

22. All agencies working with children and young people should improve their understanding of special needs and the impact these have on those specific groups over-represented in the youth justice system and in custody. The DHSSPS should lead in developing better assessment, inter-agency information exchange and cross-referral mechanisms alongside more specialised interventions.....90
23. The First and deputy First Ministers should reconfirm the Government's commitment to children and young people through the establishment of a Ministerial Committee comprising the Ministers of Education, Health and Social Services, Social Development and Justice as its core members. Its overarching aim should be to promote social inclusion, prevent offending, deliver better outcomes for children and facilitate the transition to adulthood. This Ministerial group should set the strategic direction, rationalise and make more coherent the current strategic planning process and engage other Ministers as necessary.....96
24. The Children and Young People's Strategic Partnership (CYPSP) should become the strategic, multi-agency forum through which regional and local priorities are agreed.....96
25. The Criminal Justice Delivery Group should develop a strategic interest in youth justice and, together with the Criminal Justice Board and the Ministerial Children's Committee, take overall responsibility for implementing the recommendations in this report. They should also address, as a matter of urgency, the paucity of high quality statistical data and research across and beyond the criminal justice system.....96
26. The Ministerial Committee and the CYPSP should take the lead in developing a multi-disciplinary model of practice for children in need and oversee its implementation across Northern Ireland. Once developed and agreed, consideration should be given to putting these arrangements on a statutory footing.....97
27. The success of youth and community work in Northern Ireland should be built on by providing additional resources to support its expansion, allowing other agencies to draw on the skills and expertise of youth and community workers in engaging young people, especially those who offend.....98

28. Section 53 of the Justice (NI) Act 2002 (the aims of the youth justice system) should be amended to fully reflect the best interest principles as espoused in Article 3 of the UN Convention. 101

29. The minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14. 107

30. We further recommend that, in the intervening period, appropriate local services and programmes should be developed to meet the needs of children and young people who would otherwise have entered the criminal justice system. 107

31. The NI Executive should make it clear to all public authorities that the “age” category in Section 75 of the Northern Ireland Act 1998 requires them to consider how their policies and practices impact on children and young people. 107

LIST OF ABBREVIATIONS

CAMHS	Child and Adolescent Mental Health Services
CBRJ	Community Based Restorative Justice
CIP	Child Intervention Panel
CJB	Criminal Justice Board
CJDG	Criminal Justice Delivery Group
CJINI	Criminal Justice Inspection Northern Ireland
CJS	Criminal Justice System
CYPSP	Children and Young People's Strategic Partnership
DE	Department of Education
DHSSPS	Department of Health, Social Services and Public Safety
DoJ	Department of Justice
ECHR	European Convention on Human Rights
HSCB	Health and Social Care Board
JJC	Juvenile Justice Centre (Woodlands)
JJCO	Juvenile Justice Centre Order
MACR	Minimum Age of Criminal Responsibility
NI	Northern Ireland
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICTS	Northern Ireland Courts and Tribunals Service
NIPB	Northern Ireland Policing Board
NIPS	Northern Ireland Prison Service
OFMdFM	Office of the First Minister and deputy First Minister
PACE	Police and Criminal Evidence (NI) Order 1989
PBNI	Probation Board for Northern Ireland
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
PYOP	Priority Youth Offender Project
RQIA	Regulation and Quality Improvement Authority
UK	United Kingdom
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
VOYPIC	Voice of Young People in Care
YJA	Youth Justice Agency
YOC	Young Offenders' Centre (Hydebank Wood)



PART B:

ANNEXES

Annex 1: Youth Justice Review Team Biographies

John Graham

John Graham is currently the Director of the Police Foundation for England & Wales. His career has included research and policy posts with the Home Office and Social Exclusion Unit. As Associate Director of the Audit Commission for England and Wales, he was responsible for leading a national assessment of the impact of the Government's Youth Justice reforms. He has worked as a consultant to the United Nations and the Council of Europe and has been a trustee of several charities, including the Camelot Foundation and Communities That Care UK. He is also non-executive Director of the Criminal Justice Alliance and a Visiting Professor at the Centre for Crime and Social Change at the University of Bedfordshire.

Stella Perrott

Until 2007 Dr Stella Perrott was head of the Care and Justice Division in the Scottish Government with responsibility for Youth Justice policy; the development and implementation of the reform programme for Children's Services; and the Children's Hearings system. Prior to this she was the Deputy Chief Inspector (Social Work Services Inspectorate) with responsibility for Children's Services. She has led or been a team member of a number of Scottish Government reviews including youth justice, child protection, sex offenders and women offenders. Before joining the Scottish Government Stella was an Assistant Chief Probation Officer in England and has worked in both adult and youth justice, in the community and in prisons. She is currently self-employed as a consultant in the fields of criminal justice and children's services.

Kathleen Marshall

Kathleen Marshall is a solicitor and child law consultant. Her early experience was in local government. From 1989 to 1994 she was Director of the Scottish Child Law Centre and since then her work has focused on children's rights. She chaired the Edinburgh Inquiry into Abuse and Protection of Children in Care, whose report, "Edinburgh's Children" was published in 1999. After 10 years as an independent child law consultant, she was appointed Scotland's first Commissioner for Children and Young People, with a remit to promote and safeguard children's rights. Since demitting office in 2009, she has been writing and speaking about children's rights and has assisted with a pilot scheme set up by the Scottish Government to listen to and acknowledge the experiences of adults brought up in residential care.

Annex 2: Members Of The Reference Group

Professor Shadd Maruna, Director, Institute of Criminology and Criminal Justice, Queen's University, Belfast;

Professor Michele Burman, Professor of Criminology, University of Glasgow & Co-Director, Scottish Centre for Crime and Justice Research (SCCJR);

Professor Andrew Coyle, Director, International Centre for Prison Studies, University of Essex;

Kit Chivers, Equality Commissioner, former Chief Inspector of Criminal Justice & HM Chief Inspector of the Courts in England and Wales;

Sylda Langford, Chair of the Citizens Information Board & Adjunct Professor, University College Dublin. Former Director General of the Office of the Minister for Children and Youth;

Hugh Connor, former Director of Social Services at the EHSSB & Director of Social Work in S&E Belfast HSS Trust;

Paul Leighton, Chair of Crimestoppers NI and Board Member of the Prince's Trust, Childline and NSPCC. Former Deputy Chief Constable of the Police Service of Northern Ireland.

Annex 3: Contributors to the Youth Justice Review

Ministers & MLAs

David Ford, Minister of Justice

Gerry Kelly & Robin Newton, then Junior Ministers, OFMdFM

Lord Morrow & Raymond McCartney, then Chair & Deputy Chair of Justice Committee

Full Membership of Justice Committee

Dawn Purvis, then Chair of All Party Assembly Group on Children & Young People

All Party Group on Children & Young People

Criminal Justice Organisations & Individuals

Criminal Justice Board

Criminal Justice Board Subgroup on Youth Justice

Criminal Justice Inspection NI

NI Courts & Tribunals Service

NI Law Commission

NI Law Society

Probation Board for NI

Public Prosecution Service NI

Police Service of Northern Ireland

Youth Justice Agency

Alyson Kilpatrick, NI Policing Board Human Rights Advisor

Al Hutchinson, Police Ombudsman & Sam Pollock, then Chief Executive

Pauline McCabe, Prisoner Ombudsman

Judiciary

Lord Chief Justice

Master Hillary Wells

Fiona Bagnall, Presiding District Judge

Youth Court District Judges

Departmental Representatives

Nick Perry, Permanent Secretary, Department of Justice

DoJ Justice Policy Directorate

DoJ Community Safety Unit

DoJ Protection & Organised Crime Branch

DoJ Reform Unit

DoJ Statistics & Research Unit

Department of Agriculture and Rural Development

Department of Culture, Arts and Leisure

Department of Education

Department for Employment and Learning
Department of Enterprise, Trade and Investment
Department of the Environment
Department of Finance and Personnel
Department of Health, Social Services and Public Safety
Department of Health, Social Services and Public Safety (Office of Social Services)
Department of Health, Social Services and Public Safety (CAMHS)
Department for Regional Development
Department for Social Development
Office of the First and deputy First Minister
Careers Service NI

Other Statutory Bodies

NI Human Rights Commission
NI Commissioner for Children and Young People
Public Health Agency
Health and Social Care Board

Other Review Bodies

Dame Anne Owers & Prison Review Team members
Sunita Mason, Review of Criminal Records Regime
Jim Daniel & Angela Ritchie, Access to Justice Review

Voluntary & Community Sector Organisations & Individuals

Armagh Traveller Support Group
Barnardos NI
Children's Law Centre
Community Restorative Justice Ireland
Duncan Morrow, Community Relations Council
East Belfast Alternatives girls group
Extern
GLYNI
Graeme Warke, Fountain Youth Club
Include Youth
Louise Warde-Hunter, Action for Children
NI Alternatives
NIACRO
Parents Advice Centre & Parenting Forum NI
Participation Network Young Mothers group
Peter Sheridan, Co-operation Ireland
Seamus McAleavey, NICVA
Sixth Sense

A Review of the Youth Justice System in ***Northern Ireland***

The Whistle Project
U-Turn Project
Victim Support NI
VOYPIC
YMCA
Young Voices
Youth First Project
Royal College of Speech & Language Therapists

Visits & Observations

Hydebank Wood Young Offenders' Centre
Woodlands Juvenile Justice Centre
Belfast Youth Court
Newtownards Youth Court
Observation of Youth Conferences
Lakewood Secure Care Facility
Outreach street work with EBA Street-by-Street officers
Outreach street work with Challenge for Youth workers
Accompanying PSNI patrol
Observation of Child Intervention Panel
Strand Foyer
Derry City Centre Initiative

Other workshops and consultations (formal & informal)

Workshop & consultations with Reference Group
3rd Sector event organised by CINI
Academic Symposium
Children's Law Centre Annual Lecture
Consultation with children & young people (including young offenders)
Consultation with parents groups
Consultation with victims of crime
Full Service Schools Principals
Members of Craigavon Community Safety Partnership & District Policing Partnership
Members of Derry Community Safety Partnership & District Policing Partnership
Public Consultation - Housing Community Network
University of Ulster Seminar on Restorative Justice
Workshop - Social Services & Justice staff

Annex 4: Companion Documents to be Published

The following list of documents will also be made available electronically alongside this report {www.dojni.gov.uk/youth-justice-review}. These were papers produced in evidence for, or developed during the course of, the Review to inform and advise the exercise. Permission has been received from each of the contributors to publish their work.

Please note, however, that these documents do not represent the full range of submissions or contributions to the Review. None of the responses to the first call for issues have been included, as they were provided to the Review Team in confidence. Many contributors also provided physical or electronic copies of existing reports and publications, or signposted the Team to them. Finally, some information was provided which was sensitive or confidential in nature, and this has not been included.

Papers Submitted in Formal Call for Written Evidence:

1. Action for Children
2. Children in NI (CiNI)
3. Children's Law Centre
4. Committee on the Administration of Justice
5. Include Youth
6. NICCY
7. NI Human Rights Commission – Summary of Views
8. NI Youth Council
9. NSPCC
10. Prince's Trust
11. Probation Board NI
12. University of Ulster
13. Young People's Views undertaken by Include Youth & Youth Safety Network
14. Youth Justice Agency

Papers Commissioned from Reference Group Members:

15. S Maruna: Annotated Bibliography of NI-Based Research on Youth Justice Issues
16. S Langford: Youth Justice in the Republic of Ireland – a Personal Reflection
17. M Burman: European Approaches to the Age of Criminal Responsibility
18. A Coyle: International Comparisons on the Use of Custody

Consultations undertaken on behalf of the Review Team:

19. Parenting Forum NI – Summary Report on Consultation with Parents
20. VOYPIC – Report on Consultation with Care Experienced Young People
21. Housing Community Network – Summary of Responses